

ATTACHMENT 50

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Pruett, Payton

April 8, 2014

1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

IN RE: PROCESSED EGG PRODUCTS, : MDL NO. 2002
ANTI TRUST LITIGATION : 08-md-02002

THIS DOCUMENT RELATES TO, :
Kroger, Co. v. United Egg : HIGHLY
Producers, et al., : CONFIDENTIAL
No. 2:10-cv-06705 GP :

Videotaped deposition of PAYTON PRUETT,
held at the offices of DECHERT, Cira Centre 2929
Arch Street, Philadelphia, Pennsylvania 19104, on
Tuesday, April 8, 2014, beginning at approximately
9:07 a.m., the proceedings being recorded
stenographically by Gail Inghram Verbano, Registered
Diplomate Reporter, Certified Realtime Reporter,
Certified Shorthand Reporter-CA (No. 8635), and
transcribed under her direction.

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2 (Pages 2 to 5)

2	<p>1 APPEARANCES:</p> <p>2</p> <p>3 On Behalf of R. W. Sauder, Inc.:</p> <p>4 CHRISTINE LEVIN, ESQUIRE</p> <p>5 christine.levin@dechert.com</p> <p>6 DECHERT</p> <p>7 Cira Centre</p> <p>8 2929 Arch Street</p> <p>9 Philadelphia, Pennsylvania 19104-2808</p> <p>10 215.994.4000</p> <p>11 On behalf of Krogers Co. and the witness:</p> <p>12 KEVIN J. MURRAY, ESQUIRE</p> <p>13 kmurray@kennynachwalter.com</p> <p>14 KENNY NACHWALTER</p> <p>15 1100 Miami Center</p> <p>16 201 South Biscayne Boulevard</p> <p>17 Miami, Florida 33131</p> <p>18 308.373.1000</p> <p>19 On Behalf of Midwest Poultry Services, L.P.:</p> <p>20 KATHY L. OSBORN, ESQUIRE</p> <p>21 kathy.osborn@faegrebd.com</p> <p>22 FAEGRE BAKER DANIELS, LLP</p> <p>23 300 N. Meridian Street, Suite 2700</p> <p>24 Indianapolis, Indiana 46204</p> <p>25 317.237.8261</p>	4	<p>1 CONTENTS</p> <p>2 WITNESS: PAGE</p> <p>3 PAYTON PRUETT</p> <p>4 By Ms. Levin 10</p> <p>5 By Mr. Murray 251</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 EXHIBIT DESCRIPTION PAGE</p> <p>10 Exhibit 1 Acknowledgment of Receipt of the 19</p> <p>11 Protective Order Governing</p> <p>12 Confidential Discovery Material</p> <p>13 signed by Mr. Pruett</p> <p>14 Exhibit 2 Notice of Deposition 20</p> <p>15 Exhibit 3 Letter from PETA to J. Pichler, 64</p> <p>16 10-30-00; KRGE-20496 to 498</p> <p>17 Exhibit 4 Letter from L. Marmer to S. 72</p> <p>18 Gifford, 11-3-00; KRGE-20500 to</p> <p>19 501</p> <p>20 Exhibit 5 Letter from PETA to L. Marmer, 77</p> <p>21 11-13-2000; KRGE-20490 to 493</p> <p>22 Exhibit 6 Blank form letter from D. Penick, 85</p> <p>23 11-14-20; KRGE00020502 through 03</p> <p>24 Exhibit 7 Memo from L. Marmer to J. Pichler, 90</p> <p>25 1-8-01; KRGE00020412 to 14</p>
3	<p>1 TELEPHONIC APPEARANCES:</p> <p>2 On behalf of Indirect Purchase Plaintiffs:</p> <p>3 PAUL NOVAK, ESQUIRE</p> <p>4 pnovak@milberg.com</p> <p>5 MILBERG, LLP</p> <p>6 One Kennedy Square</p> <p>7 777 Woodward Avenue, Suite 890</p> <p>8 Detroit, Michigan 48226</p> <p>9 313.309.1763</p> <p>10 On Behalf of Rose Acre Farms, Inc.:</p> <p>11 MOLLY S. CRABTREE, ESQUIRE</p> <p>12 mcrabtree@porterwright.com</p> <p>13 PORTER WRIGHT MORRIS & ARTHUR, LLP</p> <p>14 41 South High Street</p> <p>15 Columbus, Ohio 43215-6194</p> <p>16 614.227.2015</p> <p>17 On behalf of Michael Foods, Inc.:</p> <p>18 SHARON R. MARKOWITZ, ESQUIRE</p> <p>19 sharon.markowitz@stinsonleonard.com</p> <p>20 STINSON LEONARD & STREET</p> <p>21 150 South Fifth Street</p> <p>22 Suite 2300</p> <p>23 Minneapolis, Minnesota 55402</p> <p>24 612.335.1500</p> <p>25 ALSO PRESENT: William Verbano, Videographer</p>	5	<p>1 EXHIBIT DESCRIPTION PAGE</p> <p>2 Exhibit 8 The Kroger Co. press release, 102</p> <p>3 7-3-01</p> <p>4 Exhibit 9 Letter from PETA to L. Marmer, 105</p> <p>5 9-27-01; PETA65 to 66</p> <p>6 Exhibit 10 Email communication, 2-20-02; 110</p> <p>7 FMI-2427 to 429</p> <p>8 Exhibit 11 Email communication, 2-20-02; 119</p> <p>9 FMI-2422 to 424</p> <p>10 Exhibit 12 Email communication; FMI-1078 to 124</p> <p>11 079</p> <p>12 Exhibit 13 PETA news release, 5-21-02; 129</p> <p>13 FMI-1297</p> <p>14 Exhibit 14 The Kroger Co. news release, 133</p> <p>15 5-31-02</p> <p>16 Exhibit 15 Letter from C. Guerrett to B. 152</p> <p>17 Krouse, 5-26-04; KRGE-11562 to</p> <p>18 569</p> <p>19 Exhibit 16 Kroger RFP, 12-1-03; KRGE-18733 154</p> <p>20 to 738</p> <p>21 Exhibit 17 Direct Action (Non-Class) 157</p> <p>22 Plaintiff The Kroger Company's</p> <p>23 Supplemental Responses to</p> <p>24 Defendant's First Set of</p> <p>25 Interrogatories</p>

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Exhibit 18	Agreement between the Kroger Co. and Rose Acre Farms, 2-4-07; KRGE-19391 to 394	162	Exhibit 36	Schedule 14A Information, Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934	227
Exhibit 19	Agreement between the Kroger Co. and Rose Acre Farms, 4-27-08; KRGE-13093 to 096	162	Exhibit 37	Second Amended Complaint and Demand for Jury Trial	230
Exhibit 20	Nondisclosure agreement between The Kroger Co. and Cal-Maine Foods, 1-30-07; CM-404142 to 147	162	Exhibit 38	Handwritten notes of Mr. Pruett	236
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EXHIBIT	DESCRIPTION	PAGE		Philadelphia, Pennsylvania	
Exhibit 26	Guidelines for Laying Hens Standards; KRGE-00017271 to 287	167		Tuesday, April 8, 2014; 9:07 a.m.	
Exhibit 27	Email communication, 2-11-08, with attachment; KRGE-10809 to 810	174		THE VIDEOGRAPHER: We are going on the record at 9:07 on Tuesday, April 8th, 2014. This is Volume 1, Disk 1 of the videotaped deposition of Payton Pruett, taken by the defendants in the matter of Processed Egg Products Antitrust Litigation, MDL No. 2002 08-md-02002. Filed in the United States District Court, Eastern District of Pennsylvania.	
Exhibit 28	Email communication, 4-24-08; KRGE-10849	180		This deposition is being held at the Law Offices of Dechert, LLP, Cira Centre, 2929 Arch Street in Philadelphia, Pennsylvania.	
Exhibit 29	Kroger Animal Welfare Panel mission statement; KRGE-17072	182		My name is William Verbano, representing Henderson Legal Services of Washington, D.C., and I'm the legal video specialist. The court reporter today is Gail Verbano, also for Henderson Legal Services.	
Exhibit 30	Email communication, 10-6-08; KRGE-10794 to 795	186		Counsel will now state their appearance and affiliation for the video record.	
Exhibit 31	Agenda for Kroger Animal Welfare Panel meeting, 12-16-08; KRGE-17070 to 071	189		MS. LEVIN: I'm Christine Levin of Dechert, LLP. And I'm appearing on behalf of R.W. Sauder, Inc.	
Exhibit 32	Minutes for Kroger Animal Welfare Panel meeting, 12-16-08; KRGE-17241 to 242	189		MS. OSBORN: Kathy Osborn of Faegre Baker Daniels, and I'm appearing on behalf of	
Exhibit 33	Letter from J. Kolenski to B. Krouse, 11-16-09; MPS-123670	213			
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<p style="text-align: right;">10</p> <p>1 Midwest Poultry Services.</p> <p>2 MR. MURRAY: Kevin Murray from Kenny</p> <p>3 Nachwalter, representing the Kroger Company and the</p> <p>4 witness, Mr. Payton Pruett.</p> <p>5 MS. CRABTREE: Molly Crabtree of Porter</p> <p>6 Wright for defendant Rose Acre Farm.</p> <p>7 MS. MARKOWITZ: This is Sharon Markowitz</p> <p>8 for Michael Foods on the phone.</p> <p>9 THE VIDEOGRAPHER: The court reporter</p> <p>10 will now swear in the witness.</p> <p>11 - - -</p> <p>12 PAYTON PRUETT, having first been duly</p> <p>13 sworn according to law, was examined and testified</p> <p>14 as follows:</p> <p>15 - - -</p> <p>16 EXAMINATION</p> <p>17 BY MS. LEVIN:</p> <p>18 Q. Would you state your name for the</p> <p>19 record, please.</p> <p>20 A. Payton Pruett.</p> <p>21 Q. Mr. Pruett, have you ever had your</p> <p>22 deposition taken before?</p> <p>23 A. I have.</p> <p>24 Q. How many times?</p> <p>25 A. Once.</p>	<p style="text-align: right;">12</p> <p>1 only thing I would say is that if there's a question</p> <p>2 pending, I would like for you to answer the question</p> <p>3 before we take the break.</p> <p>4 And last, if you can ask me to clarify</p> <p>5 any question that you don't understand. So if</p> <p>6 there's some aspect of it, a word or a phrase,</p> <p>7 you'll just ask me to either clarify it or we'll</p> <p>8 have the court reporter read it back.</p> <p>9 A. Okay.</p> <p>10 Q. Okay?</p> <p>11 By whom are you currently employed?</p> <p>12 A. The Kroger Co.</p> <p>13 Q. And how long have you been employed by</p> <p>14 Kroger?</p> <p>15 A. It will be nine years in May.</p> <p>16 Q. So you began in 2005?</p> <p>17 A. Correct.</p> <p>18 Q. What was your first position with</p> <p>19 Kroger?</p> <p>20 A. My current position, vice president of</p> <p>21 corporate food technology and regulatory compliance.</p> <p>22 Q. Corporate?</p> <p>23 A. Food technology and regulatory</p> <p>24 compliance.</p> <p>25 Q. And what does that job entail?</p>
<p style="text-align: right;">11</p> <p>1 Q. In what connection?</p> <p>2 A. My former employer, ConAgra Foods.</p> <p>3 Q. What sort of case was the deposition?</p> <p>4 A. It dealt with a food-processing</p> <p>5 technology.</p> <p>6 Q. And what were -- was it a patent case?</p> <p>7 A. It was a patent case.</p> <p>8 Q. How long ago was that?</p> <p>9 A. 10 or 11 years ago.</p> <p>10 Q. I would -- we'll review just a few of</p> <p>11 the rules. I'm sure your counsel has reviewed them,</p> <p>12 but no harm in a second round.</p> <p>13 The first is we can't talk at the same</p> <p>14 time because the court reporter is taking down what</p> <p>15 we're saying. So I'm as guilty of this as anybody,</p> <p>16 but we'll try to avoid talking over each other.</p> <p>17 The second is I need an oral response.</p> <p>18 So nods of the head, waving of the hands doesn't</p> <p>19 work. It needs to be something oral that the</p> <p>20 reporter can take down.</p> <p>21 If at any point you want to take a</p> <p>22 break, we can take a break. As the court reporter</p> <p>23 has advised us, the tape runs for about two hours.</p> <p>24 And so if we can go that long, we'll go that long.</p> <p>25 But if you need to take a break for any reason, the</p>	<p style="text-align: right;">13</p> <p>1 A. Primarily it is responsible for food</p> <p>2 safety for our manufacturing and retail divisions,</p> <p>3 regulatory compliance, product development for our</p> <p>4 private label; occupational safety, responsibility</p> <p>5 for our manufacturing plants; and quality assurance</p> <p>6 for our private-label products produced by our</p> <p>7 manufacturing plants as well as outside suppliers.</p> <p>8 Q. And is that company-wide?</p> <p>9 A. Yes.</p> <p>10 Q. So is that for all the different</p> <p>11 brands -- the banners, I'm sorry, the different</p> <p>12 banners that Kroger --</p> <p>13 A. For all our private-label banners;</p> <p>14 correct.</p> <p>15 Q. And for all the different banner</p> <p>16 stores --</p> <p>17 A. Yes.</p> <p>18 Q. -- such as Dillons --</p> <p>19 A. Yes.</p> <p>20 Q. -- or King Soopers?</p> <p>21 Tell me a little bit about regulatory</p> <p>22 compliance and exactly what that entails.</p> <p>23 A. That means adherence to the law, the</p> <p>24 food laws; and in cases where it involves general</p> <p>25 merchandise, same thing.</p>

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<p style="text-align: right;">14</p> <p>1 Q. But it doesn't entail any sort of 2 responsibility, for example, for compliance with 3 animal welfare guidelines? 4 A. That would fall under regulatory 5 compliance within quality assurance and food safety. 6 Q. So you do have some involvement with 7 compliance with the animal -- 8 A. I do. I do have some involvement. 9 Q. We've got to slow down. 10 You have involvement with ensuring 11 compliance with animal welfare guidelines? 12 A. I do. 13 Q. Does that include animal welfare 14 guidelines pertaining to egg-laying hens? 15 A. Yes. 16 Q. What is your responsibility in that 17 regard? 18 A. To make sure our suppliers are adhering 19 to industry best practices. 20 Q. What are those industry best practices? 21 A. Relative to egg layers, it would be the UEP 22 guidelines. 23 Q. And you have had this responsibility 24 since 2005; is that correct? 25 A. Correct.</p>	<p style="text-align: right;">16</p> <p>1 A. Yes. 2 Q. What does Kroger do to ensure compliance 3 with the UEP guidelines with respect to egg-laying 4 hens? 5 A. They require our suppliers to prove that 6 they have adhered to these guidelines at least once 7 a year by submission of an audit. 8 Q. An audit by whom? 9 A. By a third-party provider, our auditing 10 company. They select. 11 Q. An auditing company that who selects? 12 A. The egg supplier. 13 Q. So the egg supplier selects an auditing 14 company, and you require that the egg supplier 15 provide you with the results of the audit? 16 A. Correct. 17 Q. And that continues to this day? 18 A. Yes. 19 Q. Why does Kroger require its egg 20 suppliers to comply with the UEP guidelines? 21 A. Because it's the industry standard, just 22 like all of our suppliers who are involved in animal 23 products; we -- whether it's cattle, pork, chickens, 24 egg layers, they need to adhere to industry 25 standards for best practices for animal welfare and</p>
<p style="text-align: right;">15</p> <p>1 Q. Since 2005, has Kroger required all of 2 its suppliers of eggs and egg products -- well, take 3 it first with eggs -- shell eggs to comply with the 4 UEP guidelines? 5 A. Yes. 6 Q. And has it required all of the suppliers 7 of egg products to comply with the UEP guidelines? 8 A. Yes. 9 Q. Do you understand -- I guess I should 10 make sure we're talking about the same thing with 11 respect to egg products. 12 Have you reviewed the Complaint in this 13 litigation? 14 A. I have. 15 Q. And are you familiar with the definition 16 used in the Complaint for egg products? 17 A. To the best of my knowledge. 18 Q. Let's just make sure we are talking 19 about the same thing. 20 Is it your understanding that egg 21 products consist of eggs that have been removed from 22 the shell and include whole eggs, whites, yokes and 23 various blends that may include some non-egg 24 ingredients that are processed and sold in liquid, 25 frozen, and dried forms?</p>	<p style="text-align: right;">17</p> <p>1 husbandry. 2 Q. And when you say "industry standards," 3 what industry are you speaking of? 4 A. I'm speaking of all industries overall. 5 But each industry has standards in place that they 6 work against. 7 Q. I guess what I'm getting at, is this a 8 retail grocery industry standard? 9 A. It can be. It's typically a standard 10 that has been created by scientists and experts, 11 industry experts within that industry. 12 Q. In this particular case, I really want 13 to focus on welfare guidelines as they pertain to 14 egg-laying hens. 15 So is it your understanding that the 16 guidelines, the UEP guidelines that Kroger requires 17 its suppliers of eggs to abide by are guidelines 18 that are created by scientists on behalf of -- what 19 industry? 20 A. The egg-laying -- the egg-layer 21 industry. 22 Q. But it's your understanding that those 23 guidelines were created by scientists? 24 A. Correct. 25 Q. And has Kroger independently evaluated</p>

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<p style="text-align: right;">18</p> <p>1 whether those guidelines are adequate to ensure 2 animal welfare? 3 A. We have had third-party experts evaluate 4 the guidelines. 5 Q. And what have those third-party experts 6 concluded? 7 A. They indicate that they're adequate. 8 Q. So they have concluded that the animal 9 welfare guidelines promulgated by UEP are adequate 10 to ensure animal welfare? 11 A. Correct. 12 Q. Did you have any involvement with the 13 development of the UEP guidelines? 14 A. No. 15 Q. Were those already in place by the time 16 you came to Kroger? 17 A. Yes. 18 Q. What was your job prior to Kroger? 19 A. I was senior director of food safety at 20 ConAgra Foods. 21 Q. How long were you in that position? 22 A. Just over five years. 23 Q. So roughly from 2000? 24 A. Uh-huh -- yes. 25 Q. In that position, did you have any</p>	<p style="text-align: right;">20</p> <p>1 management order pertaining to the handling of 2 confidential material in this litigation? 3 A. Yes. 4 Q. And you understand it? 5 A. Yes. 6 Q. Let's mark as Exhibit Kroger 2 a copy of 7 the deposition notice. 8 (Kroger Exhibit 2 was marked for 9 identification.) 10 BY MS. LEVIN: 11 Q. Mr. Pruett, have you had a chance to 12 review Exhibit Kroger 2? 13 A. Yes. 14 Q. What is Exhibit Kroger 2? 15 A. It's the deposition notice. 16 Q. Have you seen the list of topics that 17 begin on Page 4 of the deposition notice? 18 A. Yes. 19 Q. You understand today that you are 20 testifying on behalf of Kroger Corporation with 21 respect to certain of these topics? 22 A. Yes. 23 Q. Can you tell me which topics you're 24 testifying with respect to. 25 A. 1G, 13, 14, 16, 18, 19, 20, 21, 22, 23,</p>
<p style="text-align: right;">19</p> <p>1 responsibility for animal welfare guidelines as they 2 would pertain to egg-laying hens? 3 A. No. 4 Q. Did you learn anything about what was 5 going on in the industry with respect to the 6 development of such guidelines while you were at 7 ConAgra Foods? 8 A. No. 9 Q. So was the first that you became aware 10 of the UEP guidelines for egg-laying hens your 11 employment by Kroger? 12 A. Yes. 13 MS. LEVIN: Let's take just one moment 14 to mark as Exhibit Kroger 1 a copy of Mr. Pruett's 15 acknowledgment of receipt of the protective order 16 governing confidential discovery material. 17 (Kroger Exhibit 1 was marked for 18 identification.) 19 BY MS. LEVIN: 20 Q. Mr. Pruett, can you take a look at 21 Plaintiff's Exhibit -- sorry -- Exhibit Kroger 1. 22 A. Yes. 23 Q. Is that your signature on Kroger 1? 24 A. Yes. 25 Q. And have you, in fact, reviewed the case</p>	<p style="text-align: right;">21</p> <p>1 26, 27, 34, 35, 36 and 37. 2 Q. Let's begin with Topic 13. And that 3 topic asks -- lists a couple of issues pertaining to 4 Kroger's corporate structure; is that correct? 5 A. Yes. 6 Q. What is Kroger's business? 7 A. We are a grocery retailer. 8 Q. And I understand that Kroger has a 9 couple of other sidelines relating to things such as 10 jewelry; is that correct? 11 A. That is correct. 12 Q. We're focusing on the retail grocery 13 part of the deposition today; okay? 14 A. Correct. 15 Q. I'm not interested in the other 16 businesses. 17 Is Kroger publicly held? 18 A. Yes. 19 Q. And is it important to Kroger that its 20 public statements be accurate? 21 A. Yes. 22 Q. Is it important to Kroger that its 23 public statements be truthful? 24 A. Yes. 25 Q. Why is that?</p>

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<p style="text-align: right;">22</p> <p>1 A. Because it's part of the integrity of 2 our business and how we want to reflect how we do 3 business to our customers. 4 Q. So you expect customers to review public 5 statements and rely upon them? 6 MR. MURRAY: Object to the form of the 7 question; calls for speculation. 8 BY MS. LEVIN: 9 Q. Kroger expects consumers to review and 10 rely upon its public statements; is that correct? 11 MR. MURRAY: Same objection. 12 You can answer if you know. 13 THE WITNESS: I don't know the guidance 14 in that manner. It's just available for our 15 customers' review. 16 BY MS. LEVIN: 17 Q. Okay. What stores or banners does 18 Kroger operate under? 19 A. Kroger; Ralphs; Fred Meyer; QFC, Quality 20 Food Centers; Dillons; Smith's; Baker's. 21 Q. King Soopers? 22 A. King Soopers. 23 Q. That's eight. Is that as many as you're 24 aware of? 25 A. And now Harris Teeter.</p>	<p style="text-align: right;">24</p> <p>1 Q. Do you know whether those stores sell 2 eggs under a Kroger brand name or under their own 3 store name or something else? 4 A. Both. 5 Q. Okay. So some stores have their own 6 brand? 7 A. Could you repeat the question or 8 clarify. 9 Q. Well, for example, does Dillons sell 10 under a Dillons brand? 11 A. I don't know. 12 Q. Do you know whether it sells under a 13 Kroger brand? 14 A. It would sell under one of those brands. 15 Q. So a store that sells under its own 16 brand doesn't also sell under a Kroger brand? 17 A. Let me give you an example. 18 Q. Okay. 19 A. We have some divisions that may be named 20 one thing on the front of the store, but they could 21 sell a Kroger-branded product. 22 Q. Right. 23 A. Right. 24 Q. So -- well, I won't use an example, 25 because it might not be an example of that. But</p>
<p style="text-align: right;">23</p> <p>1 Q. Harris Teeter is a new one? 2 A. Uh-huh. 3 Q. Any others that you recall? 4 A. That is all I recall. 5 Q. What about Food 4 Less? 6 A. Yes. 7 Q. That's also a banner that Kroger 8 operates under? 9 A. Yes. Food 4 Less in Southern 10 California; Food 4 Less in Chicago or in the 11 Midwest. 12 Q. And what about City Market? 13 A. City Market is part of King Soopers. 14 Q. Do you know how many stores Kroger 15 operates, roughly? 16 A. 2650. 17 Q. And other than Harris Teeter, has Kroger 18 operated under the banners that you just listed for 19 the period 2000 until the present? 20 A. To the best of my knowledge. 21 Q. Do all of the stores that you've listed 22 sell shell eggs? 23 A. Yes. 24 Q. And do they all sell egg products? 25 A. To the best of my knowledge.</p>	<p style="text-align: right;">25</p> <p>1 they sell either the Kroger brand egg or their own 2 brand egg? 3 A. Our private label; yes. 4 Q. Right. And do some of those stores sell 5 under a different brand name? 6 A. They could carry a national-branded 7 product. 8 Q. Such as? 9 A. Egg Beaters. 10 Q. That's for egg products. 11 What about for shell eggs? 12 A. I cannot give you any examples of 13 national brand or regionally branded products. 14 Q. Eggland's Best, is that an example of a 15 national brand that these stores might sell? 16 A. I know it as a national brand, but I'm 17 not certain if it's sold in our stores. 18 Q. Other than Harris Teeter, which you 19 mentioned, to your knowledge, all of these stores 20 have been operated by Kroger from 2000 to the 21 present? 22 A. Yes. 23 Q. When was Harris Teeter acquired? 24 A. Officially January of 2014. 25 Q. Are there any other mergers,</p>

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<p style="text-align: right;">26</p> <p>1 acquisitions, any corporate alteration and structure 2 that you're aware of since 2000?</p> <p>3 A. There were a couple of minor 4 acquisitions. Schnucks stores -- I believe eight 5 stores in Memphis.</p> <p>6 Q. What is Schnucks?</p> <p>7 A. It's a retail grocery company.</p> <p>8 Q. When did that take place?</p> <p>9 A. I can't recall.</p> <p>10 Q. In the time period since you've been at 11 Kroger?</p> <p>12 A. Yes, yes.</p> <p>13 Q. Any other acquisitions?</p> <p>14 A. Farmer Jack's in Michigan. 15 That's all I remember.</p> <p>16 Q. But was that acquisition made since you 17 became employed by Kroger?</p> <p>18 A. Yes.</p> <p>19 Q. And that's also a retail grocery chain?</p> <p>20 A. Yes.</p> <p>21 Q. And does Schnucks operate under the 22 Schnucks banner? Are they called Schnucks stores?</p> <p>23 A. I believe they're under the Kroger 24 banner now.</p> <p>25 Q. And what about Farmer Jack's?</p>	<p style="text-align: right;">28</p> <p>1 quality specifications -- overall quality 2 specifications for eggs; some historical documents; 3 press releases; communications that were sent to our 4 suppliers prior to my arrival at Kroger regarding 5 this topic.</p> <p>6 Q. Did you review any correspondence with 7 either an organization known as PETA or FMI?</p> <p>8 A. Yes.</p> <p>9 Q. You say you consulted with counsel, and 10 I don't want to dig in to that. But how long did 11 you meet with Mr. Murray?</p> <p>12 A. Total, five hours.</p> <p>13 Q. And how much time did you spend 14 reviewing the documents that you've described?</p> <p>15 A. I'm guessing 12 hours.</p> <p>16 Q. Who in the Kroger law department did you 17 speak with?</p> <p>18 A. Gentleman named Phil Pugh.</p> <p>19 Q. And was that for the purpose of 20 obtaining factual information so that you could 21 testify today?</p> <p>22 MR. MURRAY: Object to the form of the 23 question.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: I consulted Phil to</p>
<p style="text-align: right;">27</p> <p>1 A. I do not know.</p> <p>2 Q. I believe that odd noise is someone in 3 the room next to us raising the shade. It's just a 4 guess.</p> <p>5 I'd like to turn now to the animal 6 welfare program and topics -- really Topics 18 7 through 22, which deal with a variety of different 8 issues pertaining to the animal welfare program.</p> <p>9 Can you tell me what you did to prepare 10 for these various topics, Topics 18 through 22, 11 today?</p> <p>12 A. I reviewed a number of documents. I 13 consulted with my attorney, Kevin Murray; Kroger law 14 department; and a few of my colleagues.</p> <p>15 Q. Can you tell me what types of documents 16 you reviewed.</p> <p>17 A. I reviewed our fact book about just the 18 overall business, businesses that are run by Kroger. 19 I went back and reviewed the UEP guidelines. 20 Our sustainability report, the most 21 recent addition; the Complaint; the deposition 22 notice.</p> <p>23 Q. What kind of information -- well, 24 anything else that you reviewed?</p> <p>25 A. I reviewed the egg supplier list; our</p>	<p style="text-align: right;">29</p> <p>1 prepare for this deposition.</p> <p>2 BY MS. LEVIN:</p> <p>3 Q. And did he provide you with factual 4 information pertinent to the topics that you've 5 identified in Exhibit 1?</p> <p>6 A. He and others --</p> <p>7 Q. I'm sorry. Not Exhibit 1. Exhibit 2.</p> <p>8 A. He and others in the organization.</p> <p>9 Q. Is there anybody else in the law 10 department that you met with?</p> <p>11 A. Not regarding this topic.</p> <p>12 Q. About other topics? Did you meet with 13 someone in the law department on other topics?</p> <p>14 Well, when I asked you if you met with 15 someone else in the law department, you said not on 16 this topic.</p> <p>17 A. Right.</p> <p>18 Q. So now I'm asking if you met with 19 someone different in the law department on other 20 topics.</p> <p>21 A. I met with Phil to prepare specifically 22 for this deposition.</p> <p>23 Q. And then you mentioned colleagues. 24 Which of your colleagues did you meet with?</p> <p>25 A. Lynn Marmer.</p>

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<p style="text-align: right;">30</p> <p>1 Q. What is Ms. Marmer's position?</p> <p>2 A. She's group vice president of corporate</p> <p>3 affairs.</p> <p>4 Q. And who else did you meet with?</p> <p>5 A. Brendon Cull.</p> <p>6 Q. What's Mr. Cull's position?</p> <p>7 A. Senior director of government affairs.</p> <p>8 Q. Did you meet with anybody else?</p> <p>9 A. I met with John Kolenski.</p> <p>10 Q. What is Mr. Kolenski's position?</p> <p>11 A. Senior director of food safety and</p> <p>12 regulatory compliance.</p> <p>13 Q. Anybody else that you met with?</p> <p>14 A. Tom Klump briefly.</p> <p>15 Q. What is Mr. Klump's position?</p> <p>16 A. I don't know his exact title. He's</p> <p>17 involved in procurement and sourcing of egg</p> <p>18 products.</p> <p>19 Q. And shell eggs?</p> <p>20 A. Shell eggs.</p> <p>21 And one other person?</p> <p>22 Q. Yes.</p> <p>23 A. Carole Guerrette.</p> <p>24 Q. What's Ms. Guerrette's position?</p> <p>25 A. She's a quality assurance technologist.</p>	<p style="text-align: right;">32</p> <p>1 arrived at Kroger in 2005?</p> <p>2 A. No.</p> <p>3 Q. What was his position prior to that?</p> <p>4 A. He was not at Kroger.</p> <p>5 Q. At the time you arrived at Kroger in</p> <p>6 2005, was Mr. Cull the director of government</p> <p>7 affairs?</p> <p>8 A. No.</p> <p>9 Q. I guess I'm having a hard time</p> <p>10 understanding what his prior position was at Kroger.</p> <p>11 A. He was not at Kroger.</p> <p>12 Q. What was he at?</p> <p>13 A. I came in 2005.</p> <p>14 Q. Right.</p> <p>15 A. He came in a year, year and a half after</p> <p>16 I arrived. So 2006.</p> <p>17 Q. And what was the position that he came</p> <p>18 in as? the director of government affairs?</p> <p>19 A. He came in initially as a contractor.</p> <p>20 Q. What type of contractor?</p> <p>21 A. I can't tell you exactly what that job</p> <p>22 title was or what all of his responsibilities</p> <p>23 entailed. But he did work for Lynn Marmer as a</p> <p>24 contractor.</p> <p>25 Q. What about Mr. Kolenski; was he the</p>
<p style="text-align: right;">31</p> <p>1 Q. And that's all the people that you met</p> <p>2 with to prepare for Topics 18 through 22 of</p> <p>3 Exhibit 2?</p> <p>4 A. Yes.</p> <p>5 Q. Has Ms. Marmer held the position of</p> <p>6 group vice president of corporate affairs for the</p> <p>7 entire time period that you have been at Kroger?</p> <p>8 A. Yes.</p> <p>9 Q. And has Mr. Cull been the senior</p> <p>10 director of government affairs for the entire time</p> <p>11 that you've been at Kroger?</p> <p>12 A. No.</p> <p>13 Q. What was his prior position?</p> <p>14 A. He was with the Ohio government,</p> <p>15 governor's office. I can't tell you the exact</p> <p>16 position.</p> <p>17 Q. But for his entire time at Kroger, he's</p> <p>18 been the senior director of government affairs?</p> <p>19 A. No.</p> <p>20 Q. No? That's really what I was trying to</p> <p>21 get at. What was his prior position at Kroger?</p> <p>22 A. Director.</p> <p>23 Q. Just the director of government affairs?</p> <p>24 A. Yes.</p> <p>25 Q. Did he hold that position when you</p>	<p style="text-align: right;">33</p> <p>1 senior director of food safety when you arrived at</p> <p>2 Kroger in 2005?</p> <p>3 A. No.</p> <p>4 Q. Do you know what position he held?</p> <p>5 A. He was senior manager of food safety.</p> <p>6 Q. And Mr. Klump in 2005, was he involved</p> <p>7 in procurement and sourcing of shell eggs and egg</p> <p>8 products?</p> <p>9 A. I don't know.</p> <p>10 Q. What about Carole Guerrette; did she</p> <p>11 have the position you described when you arrived at</p> <p>12 Kroger in 2005?</p> <p>13 A. Yes.</p> <p>14 Q. How long did you spend with Ms. Marmer?</p> <p>15 A. A half an hour.</p> <p>16 Q. What did Ms. Marmer tell you?</p> <p>17 A. She reviewed her involvement with FMI</p> <p>18 regarding animal welfare matters.</p> <p>19 Q. And can you be more specific about what</p> <p>20 Ms. Marmer told you.</p> <p>21 A. Well, more specifically, her involvement</p> <p>22 and Kroger's involvement regarding egg-layer animal</p> <p>23 welfare.</p> <p>24 Q. What was her involvement with that?</p> <p>25 A. She contacted or worked with the food</p>

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<p style="text-align: right;">34</p> <p>1 marketing institute to start engaging them in 2 discussions about animal welfare and opportunities 3 for the retail industry. 4 Q. So was Ms. Marmer acting on behalf of 5 Kroger at that time? 6 A. She was representing Kroger. 7 Q. And did Ms. Marmer encourage FMI to 8 develop animal welfare guidelines for egg-laying 9 hens? 10 MR. MURRAY: Object to the form of the 11 question. 12 THE WITNESS: She -- if you're asking -- 13 could you repeat the question. 14 BY MS. LEVIN: 15 Q. Why don't you read it back. 16 (Record read.) 17 MR. MURRAY: Same objection. 18 THE WITNESS: She encouraged FMI to 19 bring retailers together to discuss standardization 20 of best practices, which were in development or 21 already developed. 22 BY MS. LEVIN: 23 Q. So Ms. Marmer thought it was important 24 for retailers to work together to develop animal 25 welfare guidelines for egg-laying hens?</p>	<p style="text-align: right;">36</p> <p>1 important for retailers to work together with 2 suppliers on this particular subject? 3 MR. MURRAY: Object to the form of the 4 question. 5 THE WITNESS: Because it's the right 6 thing to do. 7 BY MS. LEVIN: 8 Q. Did Ms. Marmer tell you that Kroger was 9 receiving pressure from other organizations, 10 animal-rights-type organizations to develop animal 11 welfare guidelines in general? 12 MR. MURRAY: Object to the form of the 13 question. 14 THE WITNESS: There was pressure, and 15 PETA was given as the primary example. 16 BY MS. LEVIN: 17 Q. What is PETA? 18 A. People for the Ethical Treatment of 19 Animals. 20 Q. Did Ms. Marmer describe to you the type 21 of pressure that PETA was placing on, presumably, 22 Kroger to develop or adopt some sort of guideline? 23 A. She gave me a view. 24 Q. What was her view? 25 A. That there was some pressure on the</p>
<p style="text-align: right;">35</p> <p>1 MR. MURRAY: Object to the form of the 2 question. 3 THE WITNESS: She thought it was 4 important for FMI to start engaging retailers to 5 work with their suppliers to start talking about 6 animal welfare best practices overall. 7 The discussion did involve best 8 practices around egg-laying hens. 9 BY MS. LEVIN: 10 Q. And I would like for us to focus as much 11 as we can on those particular animal welfare 12 guidelines. 13 Do you understand we're not concerned 14 about animal welfare guidelines for cows and pigs 15 and that sort of thing in this litigation; correct? 16 A. Yes, but I just want to give you a view 17 that it wasn't just about egg-laying hens. 18 Q. I understand, and I appreciate that. 19 But I just want to make clear when I am asking the 20 questions, I am focusing on the animal welfare 21 guidelines for egg-laying hens, unless I say 22 otherwise, because it's a long phrase; and it's 23 going to make this deposition longer if I have to 24 say it every time. 25 Why did Kroger believe that it was</p>	<p style="text-align: right;">37</p> <p>1 company from activist groups, such as PETA; but 2 ultimately that wasn't the motivation for our 3 adopting UEP guidelines for our egg suppliers. 4 Q. The motivation was, as you said, it's 5 the right thing to do? 6 A. Correct. 7 Q. And it's the right thing for all 8 egg-laying hens to be treated humanely? 9 A. Yes. 10 Q. What else did Ms. Marmer tell you? 11 A. She just discussed with me the general 12 engagement with FMI, leadership, talked about a 13 committee or group of people she was working with to 14 drive this initiative of developing best practice 15 for egg layers. 16 And I understand that the dialogue 17 started early 2000s. 18 Q. The dialogue within FMI? 19 A. FMI and other retailers. 20 Q. Including Kroger? 21 A. Including Kroger. 22 Q. Did Ms. Marmer describe for you why she 23 thought it was important for FMI and the retail -- 24 for FMI retailers and producers to work together to 25 develop animal welfare guidelines for egg-laying</p>

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<p style="text-align: right;">38</p> <p>1 hens?</p> <p>2 A. Yes.</p> <p>3 Q. What did she say?</p> <p>4 A. She said that they were aware of the</p> <p>5 activity in the food service and restaurant industry</p> <p>6 regarding development of animal welfare policies,</p> <p>7 including those for egg layers.</p> <p>8 And drawing from the experience of</p> <p>9 companies like McDonald's and Burger King, they did</p> <p>10 not want to take the retail industry, an</p> <p>11 individualized approach, to developing their own --</p> <p>12 each company developing its own welfare policies or</p> <p>13 guidelines.</p> <p>14 So FMI was working with retailers to be</p> <p>15 more proactive so they could come up with a</p> <p>16 standardized set of guidelines. And, thus, or to</p> <p>17 avoid what was going on in the food service and</p> <p>18 restaurant industry.</p> <p>19 Q. Can you describe what was going on in</p> <p>20 the restaurant industry?</p> <p>21 A. From what I understand, PETA and perhaps</p> <p>22 some other activist groups were approaching each of</p> <p>23 those companies to talk to them about their animal</p> <p>24 welfare policies.</p> <p>25 Q. Were two of those companies McDonald's</p>	<p style="text-align: right;">40</p> <p>1 patchwork of animal welfare standards across the</p> <p>2 industry, why not have a best practices policy or</p> <p>3 set of guidelines that the industry could work from?</p> <p>4 It seemed to make a lot of sense.</p> <p>5 Q. Did Ms. Marmer also tell you that one</p> <p>6 goal of hers or one thought behind having this</p> <p>7 standard set of guidelines was to ensure that all</p> <p>8 retailers faced the same costs and implementation of</p> <p>9 the animal welfare guidelines?</p> <p>10 A. She did not.</p> <p>11 Q. What else did Ms. Marmer tell you?</p> <p>12 A. That is all.</p> <p>13 Q. Did Ms. Marmer tell you that a goal of</p> <p>14 FMI and its retailer members was to develop animal</p> <p>15 welfare guidelines that were science-based?</p> <p>16 MR. MURRAY: Objection to the form of</p> <p>17 the question.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MS. LEVIN:</p> <p>20 Q. What did she tell you about that?</p> <p>21 A. That -- that they expected the industry</p> <p>22 to use science-based -- use a science-based approach</p> <p>23 to develop the guidelines, people, experts who knew</p> <p>24 what they were doing in animal welfare.</p> <p>25 Q. Did she tell you that she believed that</p>
<p style="text-align: right;">39</p> <p>1 and Burger King?</p> <p>2 A. Yes.</p> <p>3 Q. And what had McDonald's and Burger King</p> <p>4 done in reaction to the approach by PETA?</p> <p>5 A. I can't tell you specifically.</p> <p>6 Q. But they had -- you understood from</p> <p>7 Ms. Marmer that McDonald's and Burger King had</p> <p>8 developed their own animal welfare guidelines?</p> <p>9 MR. MURRAY: Object to the form of the</p> <p>10 question, lack of foundation.</p> <p>11 THE WITNESS: I can't tell you</p> <p>12 specifically.</p> <p>13 BY MS. LEVIN:</p> <p>14 Q. But Ms. Marmer's and Kroger's goal in</p> <p>15 working with FMI was to try to develop something</p> <p>16 that was standardized across retailers?</p> <p>17 MR. MURRAY: Object to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MS. LEVIN:</p> <p>21 Q. And why did Ms. Marmer think that it was</p> <p>22 important to have something that was standardized</p> <p>23 across retailers?</p> <p>24 A. In my conversation with Lynn Marmer,</p> <p>25 that approach made sense. Rather than having this</p>	<p style="text-align: right;">41</p> <p>1 that had been accomplished?</p> <p>2 MR. MURRAY: Object to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: She told me that she</p> <p>5 believed that the standards were in development or</p> <p>6 were developed; and the understanding of FMI in many</p> <p>7 retailers was that most -- well, most of the egg</p> <p>8 suppliers were in the process of implementing or had</p> <p>9 implemented these best practices in animal welfare.</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. But did Ms. Marmer tell you that FMI</p> <p>12 recruited a committee of experts to help it develop</p> <p>13 science-based guidelines?</p> <p>14 MR. MURRAY: Object to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: I would like to take a</p> <p>17 break.</p> <p>18 BY MS. LEVIN:</p> <p>19 Q. I would ask that you --</p> <p>20 MR. MURRAY: You got to answer the</p> <p>21 question.</p> <p>22 BY MS. LEVIN:</p> <p>23 Q. -- answer the question first.</p> <p>24 A. I know in our conversation that there</p> <p>25 were scientific experts or a panel involved.</p>

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<p style="text-align: right;">42</p> <p>1 Q. And that this was a panel that was 2 recruited by FMI; correct?</p> <p>3 A. To the best of my knowledge.</p> <p>4 MS. LEVIN: Do you want to take a break 5 now?</p> <p>6 THE WITNESS: I would like to.</p> <p>7 MS. LEVIN: Okay. Sure.</p> <p>8 THE VIDEOGRAPHER: We are going off the 9 record. The time on video is 9:52. 10 (Recess taken.)</p> <p>11 THE VIDEOGRAPHER: We are going back on 12 the record. Time on video is 10:02.</p> <p>13 BY MS. LEVIN:</p> <p>14 Q. Mr. Pruett, did Ms. Marmer tell you that 15 it was Kroger's goal to have all retailers adopt the 16 UEP animal welfare guidelines?</p> <p>17 MR. MURRAY: Object to the form of the 18 question.</p> <p>19 THE WITNESS: She did not say that.</p> <p>20 BY MS. LEVIN:</p> <p>21 Q. Did she say that it was her hope that 22 all retailers would adopt the animal welfare 23 guidelines?</p> <p>24 MR. MURRAY: Same objection.</p> <p>25 THE WITNESS: She did not say that.</p>	<p style="text-align: right;">44</p> <p>1 Q. I'm happy to use whatever definition of 2 "doubt" that you might like to use.</p> <p>3 THE WITNESS: That didn't come up in our 4 conversation.</p> <p>5 BY MS. LEVIN:</p> <p>6 Q. So you have no reason to believe that 7 Kroger doubts that the UEP guidelines are 8 science-based guidelines for the humane treatment of 9 egg-laying hens?</p> <p>10 MR. MURRAY: Object to the form of the 11 question.</p> <p>12 THE WITNESS: I have no doubt that the 13 experts working with the egg-layer industry who were 14 responsible for developing those guidelines would 15 doubt their scientific validity.</p> <p>16 BY MS. LEVIN:</p> <p>17 Q. So you believe that the experts that 18 were involved with the development of the UEP animal 19 welfare guidelines were, in fact, experts in the 20 industry?</p> <p>21 A. To the best of my knowledge.</p> <p>22 Q. And Ms. Marmer gave you no reason to 23 question that, did she?</p> <p>24 MR. MURRAY: Object to the form of the 25 question.</p>
<p style="text-align: right;">43</p> <p>1 BY MS. LEVIN:</p> <p>2 Q. Did you ask her either of those 3 questions?</p> <p>4 A. I did not.</p> <p>5 Q. But she did tell you that she thought 6 that it would be good for there to be a standard set 7 of best practices?</p> <p>8 A. Yes.</p> <p>9 Q. Did Ms. Marmer tell you that she had any 10 question today about whether the UEP guidelines 11 were, in fact, science-based guidelines for the 12 humane treatment of egg-laying hens?</p> <p>13 A. That was not in our conversation.</p> <p>14 Q. Did she give you any reason to doubt 15 whether the UEP guidelines are, in fact, 16 science-based guidelines for the humane treatment of 17 egg-laying hens?</p> <p>18 MR. MURRAY: Object to the form of the 19 question.</p> <p>20 THE WITNESS: Repeat the question. 21 (Record read.)</p> <p>22 MR. MURRAY: Same objection.</p> <p>23 THE WITNESS: What do you mean by 24 "doubt"?</p> <p>25 BY MS. LEVIN:</p>	<p style="text-align: right;">45</p> <p>1 THE WITNESS: I don't know how I would 2 have gotten that from Lynn Marmer.</p> <p>3 BY MS. LEVIN:</p> <p>4 Q. You understand that FMI had its own 5 panel of experts who were involved in the 6 development of or in the approval of the UEP animal 7 welfare guidelines; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And I understand that today -- or do I 10 understand correctly that today Kroger has its own 11 panel of experts with respect to animal welfare 12 guidelines?</p> <p>13 A. Yes.</p> <p>14 Q. And that panel also addresses issues 15 pertaining to egg-laying hens; is that correct?</p> <p>16 A. Occasionally.</p> <p>17 Q. But that's part of its charge?</p> <p>18 A. Yes.</p> <p>19 Q. Has that panel of experts given you any 20 reason to doubt that the UEP animal welfare 21 guidelines are, in fact, science-based?</p> <p>22 A. No.</p> <p>23 Q. Has that panel made any suggestions to 24 you for amendments to the existing UEP animal 25 welfare guidelines?</p>

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<p style="text-align: right;">46</p> <p>1 A. Not to the best of my knowledge.</p> <p>2 Q. Has that panel given any indication to</p> <p>3 Kroger over the period of its existence that the UEP</p> <p>4 animal welfare guidelines were anything other than</p> <p>5 science-based guidelines for the humane treatment of</p> <p>6 egg-laying hens?</p> <p>7 MR. MURRAY: Object to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: I do not remember the</p> <p>10 panel ever giving any indication that the UEP</p> <p>11 guidelines were not adequate.</p> <p>12 BY MS. LEVIN:</p> <p>13 Q. Did you speak with any members of that</p> <p>14 panel to prepare for your testimony today?</p> <p>15 A. I did not.</p> <p>16 Q. Let's talk a little bit about Mr. Cull,</p> <p>17 who I believe you said was the senior director of</p> <p>18 government affairs at Kroger; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. How long did you speak with Mr. Cull?</p> <p>21 A. About a half an hour.</p> <p>22 Q. What did Mr. Cull tell you?</p> <p>23 A. Mr. Cull and I just discussed the state</p> <p>24 of animal welfare, best practices and policies since</p> <p>25 his time at Kroger.</p>	<p style="text-align: right;">48</p> <p>1 Q. Can you remember generally what HSUS has</p> <p>2 proposed to Kroger?</p> <p>3 A. Other than encouraging our company to</p> <p>4 continue to move forward with the industry best</p> <p>5 practices around those described in the UEP</p> <p>6 guidelines, I can't remember any other concerns or</p> <p>7 issues in those proposals.</p> <p>8 Q. I'd like to go back to Ms. Marmer for</p> <p>9 just a minute.</p> <p>10 What are her job responsibilities, do</p> <p>11 you know, generally?</p> <p>12 A. She's over external communications,</p> <p>13 company communications. She also has responsibility</p> <p>14 for our customer comments, or Customer Connect is</p> <p>15 what it's called.</p> <p>16 Q. What is Customer Connect?</p> <p>17 A. It's a place where we receive customer</p> <p>18 feedback.</p> <p>19 Q. Okay. And is that a vehicle a customer</p> <p>20 might use to inquire or encourage compliance with</p> <p>21 animal welfare guidelines of some sort?</p> <p>22 A. Not --</p> <p>23 MR. MURRAY: Object to the form of the</p> <p>24 question; calls for speculation.</p> <p>25 You can answer.</p>
<p style="text-align: right;">47</p> <p>1 Q. And what did he tell you about that?</p> <p>2 A. It was a general conversation.</p> <p>3 Q. I understand it was general.</p> <p>4 A. Right; right.</p> <p>5 Q. I'd like to know generally what he said.</p> <p>6 A. Most of the conversation was about other</p> <p>7 concerns in animal welfare since he joined the</p> <p>8 company.</p> <p>9 Q. What do you mean by "other concerns in</p> <p>10 animal welfare"? And specifically as they relate to</p> <p>11 egg-laying hens.</p> <p>12 A. He could only speak about shareholder</p> <p>13 proposals since 2006 that had involved egg laying or</p> <p>14 egg layer animal welfare concerns.</p> <p>15 Q. Has Kroger, in fact, received</p> <p>16 shareholder proposals since 2006 relating to the</p> <p>17 treatment of egg-laying hens?</p> <p>18 A. They have.</p> <p>19 Q. What are those proposals -- who has</p> <p>20 submitted those proposals?</p> <p>21 A. I believe all of the proposals have come</p> <p>22 from HSUS.</p> <p>23 Q. What have those proposals been?</p> <p>24 A. I cannot remember the specific content</p> <p>25 of the proposals.</p>	<p style="text-align: right;">49</p> <p>1 THE WITNESS: Not generally.</p> <p>2 BY MS. LEVIN:</p> <p>3 Q. What sort of -- what is Customer</p> <p>4 Connect, then?</p> <p>5 A. It's our 1-800 number. So you have</p> <p>6 individuals who get calls from customers when they</p> <p>7 have complaints.</p> <p>8 Q. What else is Ms. Marmer's -- does</p> <p>9 Ms. Marmer's job entail?</p> <p>10 A. Well, she has government affairs.</p> <p>11 Q. And what does that include?</p> <p>12 A. Government lobbying.</p> <p>13 Q. Did Ms. Marmer describe whether any of</p> <p>14 her -- did Ms. Marmer state whether she had engaged</p> <p>15 in any kind of lobbying efforts relating to animal</p> <p>16 welfare guidelines?</p> <p>17 A. She did not.</p> <p>18 Q. Did you ask?</p> <p>19 A. I did not.</p> <p>20 Q. What else is part of Ms. Marmer's job</p> <p>21 portfolio?</p> <p>22 A. She also deals with charitable giving.</p> <p>23 Q. Anything else?</p> <p>24 A. Those are her main responsibilities.</p> <p>25 Q. Have you -- do you have any kind of</p>

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<p style="text-align: right;">50</p> <p>1 reporting relationship with Ms. Marmer?</p> <p>2 A. I do not.</p> <p>3 Q. Have you had any cause to work with her</p> <p>4 on any matters since you became employed by Kroger?</p> <p>5 A. Yes.</p> <p>6 Q. Have you found Ms. Marmer to be accurate</p> <p>7 in her representations to you?</p> <p>8 MR. MURRAY: Object to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: To the best of my</p> <p>11 knowledge.</p> <p>12 BY MS. LEVIN:</p> <p>13 Q. And you've found Ms. Marmer to be</p> <p>14 truthful in her representations?</p> <p>15 MR. MURRAY: Object to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I trust Ms. Marmer as an</p> <p>18 executive of the company. I have no reason not to</p> <p>19 believe the veracity of her statement.</p> <p>20 BY MS. LEVIN:</p> <p>21 Q. And it would be important, wouldn't it,</p> <p>22 for someone in charge of external communications to</p> <p>23 be truthful and honest?</p> <p>24 MR. MURRAY: Objection; calls for</p> <p>25 speculation.</p>	<p style="text-align: right;">52</p> <p>1 A. Other animal welfare activities.</p> <p>2 Q. Were those other animal welfare</p> <p>3 activities pertaining to egg-laying hens?</p> <p>4 A. No.</p> <p>5 Q. What do you recall that he told you</p> <p>6 about these other animal welfare activities?</p> <p>7 A. Do you want me to discuss any animal</p> <p>8 welfare activities outside of egg layers?</p> <p>9 Q. Do I want you to discuss that? I'd just</p> <p>10 like to get a general idea of what Mr. Cull told you</p> <p>11 about those other activities.</p> <p>12 A. We talked about controlled-atmosphere</p> <p>13 killing for broilers. We discussed gestation crates</p> <p>14 for hogs.</p> <p>15 Q. Anything else?</p> <p>16 A. That is all I remember.</p> <p>17 Q. Did you review any documents with</p> <p>18 Mr. Cull?</p> <p>19 A. No.</p> <p>20 Q. Did Mr. Cull say whether he had reviewed</p> <p>21 any documents before meeting with you?</p> <p>22 A. I don't remember that in our</p> <p>23 conversation.</p> <p>24 Q. Did you review any documents with</p> <p>25 Ms. Marmer in the time that you spent with her?</p>
<p style="text-align: right;">51</p> <p>1 You can answer.</p> <p>2 THE WITNESS: In my opinion, yes.</p> <p>3 BY MS. LEVIN:</p> <p>4 Q. Let's go back to Mr. Cull. You said</p> <p>5 you're not really sure what types of proposals HSUS</p> <p>6 may have made to Kroger at shareholder meetings; is</p> <p>7 that correct?</p> <p>8 A. Yes.</p> <p>9 Q. So what else did Mr. Cull talk with you</p> <p>10 about?</p> <p>11 A. Relative to egg-layer animal welfare</p> <p>12 husbandry, that was it.</p> <p>13 Q. Did Mr. Cull describe for you any types</p> <p>14 of regulatory actions that various states may have</p> <p>15 taken with respect to animal welfare guidelines?</p> <p>16 A. No.</p> <p>17 Q. He didn't discuss with you the</p> <p>18 proposition in California in 2008 pertaining to</p> <p>19 cage-free eggs?</p> <p>20 A. It may have briefly come up in our</p> <p>21 conversation.</p> <p>22 Q. So do you recall anything else that</p> <p>23 Mr. Cull said to you?</p> <p>24 A. Not relative to this issue.</p> <p>25 Q. Relative to some other issue?</p>	<p style="text-align: right;">53</p> <p>1 A. I did.</p> <p>2 Q. What documents did you review with</p> <p>3 Ms. Marmer?</p> <p>4 A. A letter from her to PETA in 2000; some</p> <p>5 correspondence from PETA to our former CEO, Joe</p> <p>6 Pichler, in 2001; and a 2002 press release.</p> <p>7 Q. Those are the only documents you</p> <p>8 reviewed with Ms. Marmer; is that correct?</p> <p>9 A. That is all I remember.</p> <p>10 Q. How much time did you spend with</p> <p>11 Mr. Kolenski preparing?</p> <p>12 A. An hour.</p> <p>13 Q. What did you learn from Mr. Kolenski?</p> <p>14 A. Our conversation was similar to the one</p> <p>15 that I had with Brendon Cull.</p> <p>16 We discussed this complaint, but we also</p> <p>17 ended up discussing what has happened since I've</p> <p>18 joined the company, 2005, with animal welfare</p> <p>19 activities in general.</p> <p>20 Q. And what did Mr. Kolenski tell you had</p> <p>21 happened since 2005?</p> <p>22 A. What I remember from the conversation is</p> <p>23 that relative to this topic, we are continuing to</p> <p>24 ask our suppliers to adhere to the UEP guidelines.</p> <p>25 Q. Did Mr. Kolenski tell you why Kroger</p>

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<p style="text-align: right;">54</p> <p>1 continues to ask suppliers to adhere to the UEP 2 guidelines? 3 A. I don't remember that specifically 4 coming up in our conversation. 5 Q. So you didn't ask him why Kroger 6 continues to ask suppliers to adhere to 7 UEP guidelines? 8 A. I did not ask that question. 9 Q. What else did you and Mr. Cull discuss? 10 MR. MURRAY: Cull or Kolenski? 11 MS. LEVIN: Kolenski. I'm sorry. 12 MR. MURRAY: You're switching between 13 people here. 14 BY MS. LEVIN: 15 Q. Kolenski. 16 A. Other animal welfare activities. 17 Q. Pertaining to egg-laying hens? 18 A. No. 19 Q. Do you recall anything else in your 20 discussion with Mr. Kolenski about animal welfare 21 guidelines pertaining to egg-laying hens? 22 A. I do not. 23 Q. How long was your meeting with 24 Mr. Klump? 25 A. 20 minutes.</p>	<p style="text-align: right;">56</p> <p>1 responsibilities in egg procurement. 2 Q. Can you tell me about your conversation 3 with Ms. Guerrette. 4 A. Yes. 5 Q. How long did that take? 6 A. About a half an hour. 7 Q. What did you learn from Ms. Guerrette? 8 A. That Carole has been involved with eggs 9 for about 10 years. 10 Q. In what regard has Ms. Guerrette been 11 involved with eggs? 12 A. Quality assurance. 13 Q. What does that entail? 14 A. Ensuring that eggs meet our 15 specifications, our quality specifications. 16 Q. Is part of her job to ensure that your 17 suppliers are complying with the UEP animal welfare 18 guidelines? 19 A. No. 20 Q. What quality-assurance-type issues does 21 Ms. Guerrette address? 22 A. Egg size, color, number of defects. 23 Q. Anything else? 24 A. Transport temperatures. 25 Q. Anything else?</p>
<p style="text-align: right;">55</p> <p>1 Q. What did you discuss with Mr. Klump? 2 A. Just some of his history around his 3 responsibilities for procuring egg and egg products. 4 Q. What did Mr. Klump tell you? 5 A. He just provided a general history of 6 his responsibilities. 7 Q. And what were those responsibilities? 8 A. That in the last few years he has been 9 responsible for sourcing egg -- shell egg and egg 10 products. 11 Q. What more did Mr. Klump tell you? 12 A. At a very high level, he talked about 13 pricing, you know, their approach to some models 14 around cost. 15 Q. Anything else that you recall from your 16 conversation with Mr. Klump? 17 A. No. 18 Q. Did Mr. Klump tell you whether Kroger 19 required its shell egg and egg product producers to 20 comply with the UEP animal welfare guidelines? 21 A. I don't remember that specifically 22 coming up in our conversation. 23 Q. What was your purpose in speaking with 24 Mr. Klump? 25 A. Just to better understand his overall</p>	<p style="text-align: right;">57</p> <p>1 A. Any customer complaints around the 2 quality of the eggs. 3 Q. Anything else? 4 A. No. 5 Q. Did you learn anything from 6 Ms. Guerrette concerning the animal welfare 7 guidelines? 8 A. That she's not involved. 9 Q. Okay. Do -- does Mr. Kolenski have any 10 reporting relationship with you? 11 A. Yes. 12 Q. And what is that? 13 A. He reports directly to me. 14 Q. Who else reports directly to you? 15 A. Define "directly." 16 Q. Well, I'll use your definition again. 17 A. John reports -- I do his performance 18 review. 19 Q. We can use that as a way of evaluating. 20 Anybody else that you do a performance review for? 21 A. Carole Guerrette. 22 Q. Anybody else? 23 A. I have a large department. 24 Q. Well, if you could describe generally, 25 how many people are in your department?</p>

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<p style="text-align: right;">58</p> <p>1 A. 65.</p> <p>2 Q. And they all report to you?</p> <p>3 A. Not directly, but ultimately.</p> <p>4 Q. But ultimately. And what do those 65</p> <p>5 people do? And I don't want it one by one. But</p> <p>6 just generally, what does the department do?</p> <p>7 A. I described that at the beginning of the</p> <p>8 deposition.</p> <p>9 Q. So the department assists you in</p> <p>10 facilitating the job responsibilities that you</p> <p>11 described --</p> <p>12 A. Yes.</p> <p>13 Q. -- at the beginning?</p> <p>14 Have Ms. Guerrette and Ms. Kolenski</p> <p>15 reported to you directly since you were first</p> <p>16 employed by Kroger?</p> <p>17 A. No.</p> <p>18 Q. When did Mr. Kolenski begin to report to</p> <p>19 you?</p> <p>20 A. When I started at Kroger.</p> <p>21 Q. Okay. And he's reported to you</p> <p>22 throughout your employment by Kroger?</p> <p>23 A. Yes.</p> <p>24 Q. When did Ms. Guerrette begin to report</p> <p>25 to you?</p>	<p style="text-align: right;">60</p> <p>1 were important to Kroger in 2000?</p> <p>2 MR. MURRAY: Object to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: Could you repeat the</p> <p>5 question.</p> <p>6 (Record read.)</p> <p>7 THE WITNESS: We didn't talk about</p> <p>8 specific requirements. We just talked about the UEP</p> <p>9 requirements overall.</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. Do you know what particular animal</p> <p>12 welfare practices were of concern to Kroger in 2000?</p> <p>13 A. Not all of them.</p> <p>14 MR. MURRAY: Object to the form of the</p> <p>15 question.</p> <p>16 BY MS. LEVIN:</p> <p>17 Q. Do you know some of them?</p> <p>18 A. The only one that I specifically know</p> <p>19 of, just based on conversations and documentation --</p> <p>20 conversations I had, documentation I reviewed was</p> <p>21 those around egg layers.</p> <p>22 Q. But in particular, what were the issues,</p> <p>23 the animal welfare issues pertaining to egg layers</p> <p>24 that were of importance to Kroger?</p> <p>25 MR. MURRAY: Objection; asked and</p>
<p style="text-align: right;">59</p> <p>1 A. January of this year.</p> <p>2 Q. Did her job position change in January?</p> <p>3 A. No.</p> <p>4 Q. Just a change in reporting requirements?</p> <p>5 A. Yes.</p> <p>6 Q. To whom do you report?</p> <p>7 A. Erin Sharp.</p> <p>8 Q. Who is Mr. Sharp?</p> <p>9 A. Mrs.</p> <p>10 Q. Ms. Sharp. Okay.</p> <p>11 A. She's group vice president.</p> <p>12 Q. What do you mean by "group vice</p> <p>13 president"?</p> <p>14 A. Of manufacturing.</p> <p>15 Q. What are Ms. Sharp's responsibilities?</p> <p>16 A. She's over our 37 manufacturing plants.</p> <p>17 Q. Does Kroger produce any of its own --</p> <p>18 any of the eggs that it sells?</p> <p>19 A. No.</p> <p>20 Q. So Kroger procures all of its shell eggs</p> <p>21 and egg products from outside sources?</p> <p>22 A. Yes.</p> <p>23 Q. Did you discuss with Ms. Marmer or with</p> <p>24 any of these individuals what specific animal</p> <p>25 welfare practices with respect to egg-laying hens</p>	<p style="text-align: right;">61</p> <p>1 answered.</p> <p>2 THE WITNESS: The UEP requirements.</p> <p>3 BY MS. LEVIN:</p> <p>4 Q. Well, do you know whether cage-space</p> <p>5 requirements were an issue that was important to</p> <p>6 Kroger?</p> <p>7 MR. MURRAY: Objection; asked and</p> <p>8 answered.</p> <p>9 THE WITNESS: I wasn't with the company</p> <p>10 then, so I can't really tell you.</p> <p>11 BY MS. LEVIN:</p> <p>12 Q. You didn't learn from Ms. Marmer whether</p> <p>13 that was an issue?</p> <p>14 A. I learned from Ms. Marmer that all of</p> <p>15 the requirements relative to animal welfare were</p> <p>16 being considered.</p> <p>17 Q. All of the requirements that ultimately</p> <p>18 found their way into the UEP animal welfare</p> <p>19 guidelines?</p> <p>20 MR. MURRAY: Object to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: Found their way into the</p> <p>23 guidelines. I need --</p> <p>24 BY MS. LEVIN:</p> <p>25 Q. Became a part of the guidelines.</p>

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<p style="text-align: right;">62</p> <p>1 A. What was important to the company was 2 that the industry was following the best practices 3 that their experts developed. 4 Q. So it was important to Kroger that the 5 retail grocery industry have uniform requirements? 6 MR. MURRAY: Object to the form of the 7 question, mischaracterizes prior testimony. 8 BY MS. LEVIN: 9 Q. Is that correct? 10 A. It was important that our suppliers 11 follow the best practices that they had created and 12 started standardizing. 13 Q. That who had created? 14 A. The suppliers, the egg suppliers. 15 Q. Well, you understood, did you not, that 16 Kroger requested that FMI begin to review the issue 17 of animal welfare in 2001; correct? 18 A. May I review that document? 19 Q. I'm asking whether you understood that. 20 A. I understood that in the conversation I 21 had with Lynn Marmer. 22 Q. And you understood from your 23 conversation with Ms. Marmer that FMI teamed up with 24 NCCR to jointly address animal welfare issues; 25 correct?</p>	<p style="text-align: right;">64</p> <p>1 develop science-based guidelines that will 2 strengthen animal welfare practices across species, 3 that would not be correct? 4 MR. MURRAY: Object to the form of the 5 question. 6 THE WITNESS: I don't know if it's 7 correct or not. I'm just telling you how I 8 understand it. 9 BY MS. LEVIN: 10 Q. Well, we'll go through some documents to 11 see if we can bolster your recollection. 12 MS. LEVIN: I'd like to mark as 13 Exhibit 3 a document bearing Bates No. KRGE00020496 14 through 20498. 15 (Kroger Exhibit 3 was marked for 16 identification.) 17 BY MS. LEVIN: 18 Q. If you could take a minute to review 19 Exhibit 3. 20 A. I've reviewed this document. 21 Q. You've had a chance to review Exhibit 3? 22 A. Yes. 23 Q. What is Exhibit 3? 24 A. It is a letter from PETA to our former 25 CEO.</p>
<p style="text-align: right;">63</p> <p>1 A. That was brought up in our conversation. 2 Q. And you understood that that is what 3 happened in 2001 and 2002; correct? 4 A. Yes. 5 Q. And you understood from Ms. Marmer that, 6 as of 2002, FMI and NCCR had been working with their 7 members and leading animal welfare experts to 8 develop science-based guidelines that will 9 strengthen animal welfare practices across species; 10 correct? 11 A. That's what I understood. 12 Q. So the guidelines that we're talking 13 about were guidelines that were first initiated by 14 FMI and NCCR together with their science -- together 15 with their panel of experts; correct? 16 MR. MURRAY: Object to the form of the 17 question. 18 THE WITNESS: How I understood it was 19 that the scientific experts at FMI were evaluating 20 guidelines that had already been created by the eggs 21 businesses. 22 BY MS. LEVIN: 23 Q. So if Kroger stated in a press release 24 in 2002 that FMI and NCCR have been working with 25 their members and leading animal welfare experts to</p>	<p style="text-align: right;">65</p> <p>1 Q. Dated October 30, 2000; is that correct? 2 A. Yes. 3 Q. Did you discuss this letter -- did you 4 discuss Exhibit 3 with Ms. Marmer when you met with 5 her? 6 A. I don't remember this specific letter. 7 Q. But you discussed similar letters from 8 PETA with Ms. Marmer? 9 A. I remember letters from PETA but not 10 this one. 11 Q. Okay. Does reviewing this letter at all 12 refresh your recollection about whether McDonald's 13 had adopted its own industry -- its own standards 14 for dealing with egg-laying hens? 15 MR. MURRAY: Object to the form of the 16 question. 17 THE WITNESS: I guess the issue I have 18 with this letter, it's PETA's interpretation of what 19 McDonald's is trying to do. 20 BY MS. LEVIN: 21 Q. Well, I understand. And we have some of 22 Ms. Marmer's interpretations as well. I'm just 23 asking whether this refreshes your recollection at 24 all in your discussions with Ms. Marmer or with 25 anybody else that, in fact, McDonald's had</p>

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<p style="text-align: right;">66</p> <p>1 instituted its own guidelines for egg-laying hens.</p> <p>2 A. What I remember from the conversation</p> <p>3 with Lynn Marmer is the discussion about McDonald's</p> <p>4 and other food service companies being approached by</p> <p>5 organizations like PETA and starting to develop</p> <p>6 their own standards.</p> <p>7 BY MS. LEVIN:</p> <p>8 Q. Was it of concern -- well, do you know</p> <p>9 whether McDonald's and other food service providers</p> <p>10 were developing standards together, or were they</p> <p>11 developing them separately?</p> <p>12 MR. MURRAY: Objection; lack of</p> <p>13 foundation.</p> <p>14 THE WITNESS: What I remember from the</p> <p>15 conversation with Lynn Marmer is that the food</p> <p>16 service companies were working on individual</p> <p>17 standards.</p> <p>18 BY MS. LEVIN:</p> <p>19 Q. And by "food service companies," you</p> <p>20 mean McDonald's, for instance?</p> <p>21 A. Yes.</p> <p>22 Q. And Burger King perhaps?</p> <p>23 A. Yes.</p> <p>24 Q. And do you recall from your discussions</p> <p>25 with Ms. Marmer that McDonald's and Burger King were</p>	<p style="text-align: right;">68</p> <p>1 on the research you did to prepare for your</p> <p>2 deposition today?</p> <p>3 A. This specific document was not -- to the</p> <p>4 best of my knowledge, I don't remember reviewing</p> <p>5 McDonald's-specific standards.</p> <p>6 Q. I understand that you don't recall</p> <p>7 reviewing McDonald's-specific standards.</p> <p>8 My question is whether -- as a basis of</p> <p>9 your -- on the -- as part of your investigation to</p> <p>10 prepare for your deposition today, you did not learn</p> <p>11 anything that would enable you to dispute what's</p> <p>12 stated in the second paragraph of Defendants'</p> <p>13 Exhibit 3?</p> <p>14 MR. MURRAY: Objection; asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: All I know is that our</p> <p>17 conversation that food service industry, McDonald's</p> <p>18 being one of those companies, was on a track to</p> <p>19 developing their own animal welfare standards. But</p> <p>20 we did not talk about specifics.</p> <p>21 BY MS. LEVIN:</p> <p>22 Q. Okay. Did Ms. Marmer tell you whether</p> <p>23 Kroger was going to consider just adopting</p> <p>24 McDonald's animal welfare standards?</p> <p>25 A. No.</p>
<p style="text-align: right;">67</p> <p>1 developing their standards separate and apart from</p> <p>2 each other?</p> <p>3 MR. MURRAY: Objection; lack of</p> <p>4 foundation.</p> <p>5 THE WITNESS: I don't know if they were</p> <p>6 working together or not.</p> <p>7 BY MS. LEVIN:</p> <p>8 Q. What you did understand was that at</p> <p>9 least McDonald's was developing its own regulations;</p> <p>10 correct?</p> <p>11 A. All I know in the conversation is that</p> <p>12 they had developed their standards.</p> <p>13 Q. "They" being McDonald's?</p> <p>14 A. "They" being McDonald's.</p> <p>15 Q. And you have no basis to dispute what is</p> <p>16 said in Defendants' Exhibit 3 with respect to</p> <p>17 McDonald's?</p> <p>18 MR. MURRAY: Object to the form of the</p> <p>19 question; lack of foundation.</p> <p>20 THE WITNESS: I can't say whether this</p> <p>21 is accurately representing McDonald's position.</p> <p>22 It's from PETA.</p> <p>23 BY MS. LEVIN:</p> <p>24 Q. But you can't say that it's not</p> <p>25 accurately representing McDonald's position, based</p>	<p style="text-align: right;">69</p> <p>1 Q. Did you discuss with her whether it was</p> <p>2 a good thing or a bad thing that McDonald's was</p> <p>3 developing its own animal welfare standards?</p> <p>4 MR. MURRAY: Object to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: We did not talk about</p> <p>7 McDonald's standards.</p> <p>8 BY MS. LEVIN:</p> <p>9 Q. Did Ms. Marmer express to you any</p> <p>10 concern that she had, back in 2000/2001, about</p> <p>11 retailers or chain restaurants or whatever</p> <p>12 developing individual guidelines for animal welfare?</p> <p>13 MR. MURRAY: Object to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: Could you read the</p> <p>16 question back, please.</p> <p>17 (Record read.)</p> <p>18 THE WITNESS: She -- I don't know if I</p> <p>19 would characterize it as "concern," as more than --</p> <p>20 well, the food service industry is doing this on</p> <p>21 their own and, you know, through FMI, we should be</p> <p>22 working -- the retail industry, that is -- to</p> <p>23 develop or not develop, but to seek best practices</p> <p>24 that are standardized across the egg-laying -- or</p> <p>25 the egg-layer industry.</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 BY MS. LEVIN:</p> <p>2 Q. You didn't discuss this particular</p> <p>3 document, you say, with Ms. Marmer?</p> <p>4 A. I don't remember it.</p> <p>5 Q. So you don't have any information as to</p> <p>6 how it came to be addressed to Mr. Pichler, but --</p> <p>7 for these issues to wind up on Ms. Marmer's desk?</p> <p>8 A. Repeat the question.</p> <p>9 (Record read.)</p> <p>10 MR. MURRAY: Object to the form of the</p> <p>11 question.</p> <p>12 THE WITNESS: I don't know.</p> <p>13 BY MS. LEVIN:</p> <p>14 Q. Look at the second and third pages of</p> <p>15 Defendants' Exhibit 3 for just a minute and, in</p> <p>16 particular, paragraphs 5, 6, 8 -- 5, 6 and 8.</p> <p>17 A. Okay.</p> <p>18 Q. Do those paragraphs at all refresh your</p> <p>19 recollection from any of your conversations to</p> <p>20 prepare for your deposition today about the issues</p> <p>21 with respect to egg-laying hens that were of concern</p> <p>22 to Kroger in 2000?</p> <p>23 MR. MURRAY: Objection to the form of</p> <p>24 the question.</p> <p>25 THE WITNESS: As I said, these</p>	<p style="text-align: right;">72</p> <p>1 had been -- that were in development or had been</p> <p>2 developed by UEP.</p> <p>3 MS. LEVIN: Let's mark as Exhibit 4 a</p> <p>4 document bearing Bates No. KRGE00020500 through 01.</p> <p>5 (Kroger Exhibit 4 was marked for</p> <p>6 identification.)</p> <p>7 BY MS. LEVIN:</p> <p>8 Q. Have you had a chance to review</p> <p>9 Exhibit 4?</p> <p>10 A. I have.</p> <p>11 Q. What is Exhibit 4?</p> <p>12 A. It's a letter from Mr. Sean Gifford from</p> <p>13 PETA -- or from Lynn Marmer, excuse me, to Sean</p> <p>14 Gifford at PETA.</p> <p>15 Q. And it's dated November 3, 2000; is that</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Does that appear to be Ms. Marmer's</p> <p>19 signature on the second page of Exhibit 4?</p> <p>20 MR. MURRAY: Objection; lack of</p> <p>21 foundation.</p> <p>22 THE WITNESS: I don't know --</p> <p>23 BY MS. LEVIN:</p> <p>24 Q. Do you have any reason --</p> <p>25 A. -- her signature.</p>
<p style="text-align: right;">71</p> <p>1 requirements look specific to McDonald's, and we did</p> <p>2 not discuss any requirements specific to McDonald's.</p> <p>3 And this is PETA trying to articulate</p> <p>4 their requirements.</p> <p>5 BY MS. LEVIN:</p> <p>6 Q. Right. It says, right before these</p> <p>7 numbered paragraphs, it says [reading]: We urge</p> <p>8 you, being Kroger, to make a commitment similar to</p> <p>9 the one that McDonald's has made by instituting the</p> <p>10 following changes.</p> <p>11 And Paragraphs 5, 6 and 8 in particular</p> <p>12 pertain to egg-laying hens; is that correct?</p> <p>13 A. It appears that way.</p> <p>14 Q. And Paragraphs 5 relates to cage-space</p> <p>15 requirements; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Was that an issue that was of concern to</p> <p>18 Kroger and -- prior to the development of any animal</p> <p>19 welfare guidelines?</p> <p>20 MR. MURRAY: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: As I stated, the</p> <p>23 requirements that Kroger was trying to follow were</p> <p>24 those developed or -- the requirements we were</p> <p>25 wanting our egg suppliers to follow were those that</p>	<p style="text-align: right;">73</p> <p>1 Q. Do you have any reason to believe it's</p> <p>2 not Ms. Marmer's signature on the second page of</p> <p>3 Exhibit 4?</p> <p>4 MR. MURRAY: Objection; lack of</p> <p>5 foundation.</p> <p>6 THE WITNESS: I don't know her</p> <p>7 signature, unless I've seen -- I could look at it</p> <p>8 now.</p> <p>9 BY MS. LEVIN:</p> <p>10 Q. Do you have any reason to dispute that</p> <p>11 is Ms. Marmer's signature on the second page of</p> <p>12 Exhibit 4?</p> <p>13 MR. MURRAY: Objection; asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: I don't know if it's her</p> <p>16 signature.</p> <p>17 BY MS. LEVIN:</p> <p>18 Q. Is this is a document that you reviewed</p> <p>19 with Ms. Marmer to prepare for your deposition</p> <p>20 today?</p> <p>21 A. I specifically don't remember it.</p> <p>22 Q. Does Exhibit 4 appear to be a response</p> <p>23 by Ms. Marmer to Mr. Gifford's letter that is</p> <p>24 Exhibit 3?</p> <p>25 MR. MURRAY: Objection; calls for</p>

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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 speculation.</p> <p>2 THE WITNESS: I don't know specifically</p> <p>3 what it's in response to.</p> <p>4 BY MS. LEVIN:</p> <p>5 Q. Well, it states in the first sentence</p> <p>6 specifically what it's in response to, doesn't it?</p> <p>7 A. It's talking about general requirements.</p> <p>8 Q. Mr. Pruett, read the first sentence of</p> <p>9 Exhibit 4.</p> <p>10 A. [Reading]: I am writing in response to</p> <p>11 your recent letters requesting information about the</p> <p>12 Kroger Company's position regarding the humane</p> <p>13 treatment of animals by our beef, pork, chicken and</p> <p>14 egg suppliers.</p> <p>15 Q. And read the first sentence of</p> <p>16 Exhibit 3, dated three days prior to Exhibit 4.</p> <p>17 A. The first sentence?</p> <p>18 Q. Yes.</p> <p>19 A. [Reading]: On behalf of People for the</p> <p>20 Ethical Treatment of Animals, PETA, and our more</p> <p>21 than 700,000 members and supporters, I am writing to</p> <p>22 request a copy of your standards for the welfare of</p> <p>23 animals raised by your beef, pork, chicken, egg and</p> <p>24 dairy product suppliers and urge you to exceed</p> <p>25 McDonald's new animal welfare standards.</p>	<p style="text-align: right;">76</p> <p>1 cages provide at least 72 square inches of space per</p> <p>2 animal.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And someone has written "no" and "not</p> <p>6 true."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know whether, as of November 3,</p> <p>10 2000, it was true that your egg suppliers provided</p> <p>11 at least 72 square inches of space per animal?</p> <p>12 A. I do not.</p> <p>13 Q. You don't have any information as to</p> <p>14 whether the "not true" and -- who wrote "not true"</p> <p>15 and "no" at that particular portion of Exhibit 4?</p> <p>16 A. I do not.</p> <p>17 Q. On the second page of Exhibit 4,</p> <p>18 Ms. Marmer writes that they will share copies of the</p> <p>19 correspondence PETA has provided, first to let them</p> <p>20 know we take your concerns seriously and, second, to</p> <p>21 encourage our suppliers to review the practices</p> <p>22 adopted by McDonald's and the recommendations</p> <p>23 contained in your letter.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>
<p style="text-align: right;">75</p> <p>1 Q. So does it appear that Exhibit 4 is in</p> <p>2 response to Exhibit 3?</p> <p>3 MR. MURRAY: Same objection; asked and</p> <p>4 answered, calls for speculation.</p> <p>5 THE WITNESS: Since I wasn't at the</p> <p>6 company at this time, I don't know the intent of</p> <p>7 Mr. Pichler and Mrs. Marmer as far as their</p> <p>8 responses to PETA.</p> <p>9 BY MS. LEVIN:</p> <p>10 Q. I'm not asking what their intent was,</p> <p>11 Mr. Pruett.</p> <p>12 Having read the first sentence of</p> <p>13 Exhibit 3 and the first sentence of Exhibit 4,</p> <p>14 you're not able to say whether Exhibit 4 is in</p> <p>15 response to Exhibit 3?</p> <p>16 MR. MURRAY: Objection; asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: I would only be</p> <p>19 speculating to say specifically in response.</p> <p>20 BY MS. LEVIN:</p> <p>21 Q. Well, we certainly don't want you to</p> <p>22 speculate.</p> <p>23 A. Huh-uh.</p> <p>24 Q. At the bottom of Exhibit 4, Ms. Marmer</p> <p>25 writes [reading]: The few suppliers that do use</p>	<p style="text-align: right;">77</p> <p>1 Q. Do you know whether Kroger, in fact,</p> <p>2 shared copies of the correspondence PETA has</p> <p>3 provided with its suppliers?</p> <p>4 A. I do not.</p> <p>5 MS. LEVIN: Let's mark as Exhibit 5 a</p> <p>6 document bearing Bates No. KRGE00020490.</p> <p>7 (Kroger Exhibit 5 was marked for</p> <p>8 identification.)</p> <p>9 THE WITNESS: I reviewed Exhibit 5.</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. What is Exhibit 5?</p> <p>12 A. It's a note from Sean Gifford of PETA to</p> <p>13 Lynn Marmer, a letter.</p> <p>14 Q. The first page of Exhibit 5 references a</p> <p>15 phone call that Ms. Marmer had with Mr. Gifford</p> <p>16 earlier on the date that this communication was</p> <p>17 written; is that correct? It's not in the letter.</p> <p>18 It's the fax cover sheet.</p> <p>19 A. "I hope our conversation was helpful."</p> <p>20 Q. Right. So it references a conversation</p> <p>21 that Ms. Marmer and Mr. Gifford had earlier on</p> <p>22 November 13th; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Did you discuss Defendants' Exhibit 5</p> <p>25 with Ms. Marmer?</p>

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21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 A. I don't remember this letter in our 2 discussions. 3 Q. Did you discuss with Ms. Marmer whether 4 she had any conversations with anyone from PETA 5 during the course of her dealings with them? 6 A. The only thing I remember from our 7 conversations is she had conversations with PETA, 8 but she didn't say specifically who the individuals 9 were. 10 Q. What did she tell you about her 11 conversations with PETA? 12 A. That they were talking to Kroger about, 13 you know, animal welfare opportunities. 14 Q. And did she tell you anything about 15 those conversations? 16 A. Only -- I remember that PETA was putting 17 pressure on the industry, some retailers, and Kroger 18 was one of those companies. 19 Q. But she didn't tell you specifically 20 what the issues were with respect to animal welfare 21 that PETA was putting pressure on Kroger about? 22 A. Just animal welfare issues in general. 23 Q. Did you ask her to give you any more 24 specificity as to what the issues were? 25 A. I did not.</p>	<p style="text-align: right;">80</p> <p>1 Ms. Marmer. I don't know whether she received this 2 letter or not. 3 BY MS. LEVIN: 4 Q. You understand, Mr. Pruett, that you 5 were to prepare for your testimony here today and be 6 able to testify knowledgeably on one of several 7 subjects, one of which is Deposition Topic 18? 8 A. Yes. 9 Q. And that topic relates to pressure, 10 suggestions, coercions, threats, boycotts or other 11 efforts from animal rights groups, such as People 12 for the Ethical Treatment of Animals, for Kroger to 13 change, modify or explain with respect to eggs or 14 egg products, purchasing decisions, procurement 15 practices or suppliers, and so forth. 16 A. Yes. 17 MR. MURRAY: And I'll state for the 18 record that we extended an offer to counsel to 19 identify any particular documents she wanted the 20 witness educated on; and none were provided. 21 MS. LEVIN: Yes. That invitation was 22 extended in the middle of a deposition that I was 23 taking and you were defending and gave us exactly 24 24 hours, I believe, to respond. 25 MR. MURRAY: No. That was extended, and</p>
<p style="text-align: right;">79</p> <p>1 Q. Do you have any doubt that Kroger 2 received Defendants' Exhibit 5 on or about 3 November 13th, 2000? 4 MR. MURRAY: Objection; lack of 5 foundation. 6 THE WITNESS: I can't speak to whether 7 Lynn Marmer received this or not. 8 BY MS. LEVIN: 9 Q. So you have no basis for denying that 10 Ms. Marmer received it? 11 MR. MURRAY: Same objection. 12 THE WITNESS: Like I said, I can't speak 13 for Mrs. Marmer. 14 BY MS. LEVIN: 15 Q. I'd like an answer to my question: Do 16 you have any basis for stating that Ms. Marmer did 17 not receive Defendants' Exhibit 5? 18 MR. MURRAY: Objection; lack of 19 foundation, asked and answered. 20 BY MS. LEVIN: 21 Q. Would you like the question read back? 22 A. Yes, please. 23 (Record read.) 24 MR. MURRAY: Same objection. 25 THE WITNESS: I can't speak for</p>	<p style="text-align: right;">81</p> <p>1 it was renewed then. It was extended at the 2 meet-and-confer process at the beginning of the 3 deposition proceeding. 4 MS. LEVIN: Mr. Murray, I really don't 5 want to get into this. But I sent you or your 6 partner, Mr. Patton, a detailed email about our meet 7 and confer back last August. I asked you at least 8 twice in the last month whether you had any response 9 to that, and I got zero response from you. 10 That detailed description of our meet 11 and confer makes no reference to any request for any 12 documents. I received no such request from you 13 until April 1st. 14 MR. MURRAY: It was stated orally during 15 the meet and confer. The fact that you didn't note 16 it in your letter is self-serving, and it doesn't 17 mean anything. 18 MS. LEVIN: And I gave you two 19 opportunities, asked you to correct anything; and 20 you did not respond to either one of them. So -- 21 MR. MURRAY: We did -- 22 MS. LEVIN: -- that's what the record 23 reflects. 24 MR. MURRAY: We did renew the offer. 25 MS. LEVIN: That's what the record</p>

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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 reflects.</p> <p>2 MR. MURRAY: Well, the record reflects</p> <p>3 exactly as I've stated it.</p> <p>4 BY MS. LEVIN:</p> <p>5 Q. So you are unable, Mr. Pruett, to state</p> <p>6 that Ms. Marmer did not receive a copy of</p> <p>7 Defendants' Exhibit 5 on or about November 13th,</p> <p>8 2000?</p> <p>9 MR. MURRAY: Objection; asked and</p> <p>10 answered.</p> <p>11 THE WITNESS: I do not know whether she</p> <p>12 received it or not.</p> <p>13 BY MS. LEVIN:</p> <p>14 Q. So you can't state that she did not, can</p> <p>15 you?</p> <p>16 MR. MURRAY: Same objection; asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: Mrs. Marmer is the only</p> <p>19 one that can answer whether she received this letter</p> <p>20 or not.</p> <p>21 BY MS. LEVIN:</p> <p>22 Q. Exactly. And you didn't ask Ms. Marmer</p> <p>23 that question, did you?</p> <p>24 A. I did not.</p> <p>25 Q. You didn't review the document with</p>	<p style="text-align: right;">84</p> <p>1 A. I trust that it is her signature.</p> <p>2 Q. Well, when you reviewed it with</p> <p>3 Ms. Marmer, she didn't you that it is not her</p> <p>4 signature, did she?</p> <p>5 A. She did not.</p> <p>6 Q. Did she discuss with you the sentence at</p> <p>7 the end of the first page of Exhibit 4 that says,</p> <p>8 "The few suppliers that do use cages provide at</p> <p>9 least 72 square inches of space per animal"?</p> <p>10 A. We did not discuss that specifically.</p> <p>11 Q. Did you discuss who might have written</p> <p>12 "not true" next to that sentence?</p> <p>13 A. I actually do not remember seeing those</p> <p>14 marks on the document.</p> <p>15 Q. But it's possible that they were on the</p> <p>16 document?</p> <p>17 A. It's --</p> <p>18 MR. MURRAY: Objection; calls for</p> <p>19 speculation.</p> <p>20 BY MS. LEVIN:</p> <p>21 Q. Is there anything else you'd like to</p> <p>22 correct about your testimony with respect to</p> <p>23 Exhibit 4?</p> <p>24 A. All I can tell you is it's on my</p> <p>25 document list, and it was -- it was discussed,</p>
<p style="text-align: right;">83</p> <p>1 Ms. Marmer?</p> <p>2 A. I don't remember this document during</p> <p>3 our discussion.</p> <p>4 Q. But you found other PETA correspondence</p> <p>5 that you reviewed with Ms. Marmer; correct?</p> <p>6 A. I remember one or two other letters.</p> <p>7 Q. What were the dates of those letters?</p> <p>8 A. There was one -- okay. When I look at</p> <p>9 my list -- my apologies -- this is on my list.</p> <p>10 Q. So you did review Exhibit 5 with</p> <p>11 Ms. Marmer?</p> <p>12 MR. MURRAY: No. He's pointing to a</p> <p>13 different document.</p> <p>14 THE WITNESS: No. I -- I do have on my</p> <p>15 list a Lynn Marmer letter to PETA. That would be --</p> <p>16 not -- it just says: To PETA, 11/2000.</p> <p>17 BY MS. LEVIN:</p> <p>18 Q. So would that be Exhibit 4?</p> <p>19 A. That would be Exhibit 4.</p> <p>20 Q. Would you like to correct your testimony</p> <p>21 about --</p> <p>22 A. I would like to correct my testimony.</p> <p>23 Q. Would you like to correct your testimony</p> <p>24 about whether that's Ms. Marmer's signature on</p> <p>25 Exhibit 4?</p>	<p style="text-align: right;">85</p> <p>1 evidently. But I don't remember getting any details</p> <p>2 or talking about the 72 square inches of space.</p> <p>3 Q. Your list also includes correspondence</p> <p>4 from PETA from 2000?</p> <p>5 A. I have the letter from Lynn Marmer to</p> <p>6 PETA. And I have correspondence -- PETA</p> <p>7 correspondence to Mr. Pichler in 2001. And this</p> <p>8 says 2000, the note to Mr. Pichler.</p> <p>9 Q. When you looked at Exhibit 4 and it said</p> <p>10 to Mr. Gifford, I'm writing in response to your</p> <p>11 recent letters requesting information about the</p> <p>12 Kroger Company's position regarding the humane</p> <p>13 treatment of animals by our beef, pork, chicken and</p> <p>14 egg suppliers, did you ask Ms. Marmer what those</p> <p>15 letters might have been?</p> <p>16 A. I did not.</p> <p>17 MS. LEVIN: Let's mark as Exhibit 6 a</p> <p>18 document bearing Bates No. KRGE00020502 through</p> <p>19 '03.</p> <p>20 (Kroger Exhibit 6 was marked for</p> <p>21 identification.)</p> <p>22 THE WITNESS: I reviewed Exhibit 6.</p> <p>23 BY MS. LEVIN:</p> <p>24 Q. What is Exhibit 6?</p> <p>25 A. It appears to be a letter to our</p>

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23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 suppliers -- that would be affected by animal 2 welfare issues, from Derrick Penick. 3 Q. Do you know whether Exhibit 6 was, in 4 fact, sent to any suppliers? 5 A. I do not. 6 Q. Does Exhibit 6 appear to be the letter 7 referenced by Ms. Marmer in Exhibit 4, when she says 8 [reading]: We will share with our suppliers copies 9 of the correspondence PETA has provided? 10 MR. MURRAY: Objection; calls for 11 speculation. 12 THE WITNESS: What was the question 13 again? 14 BY MS. LEVIN: 15 Q. Whether it appears to be the letter 16 Ms. Marmer references in Exhibit 4 when she says 17 [reading]: We will share with all of our suppliers 18 copies of the correspondence PETA has provided. 19 A. I can't speak to whether this letter is 20 in direct relationship, Exhibit 6 to Exhibit 4. 21 Q. You would agree with me Exhibit 4 22 says -- Ms. Marmer writes [reading]: We will share 23 with all of our suppliers copies of the 24 correspondence PETA has provided for two purposes: 25 First, to let them know we take your concerns</p>	<p style="text-align: right;">88</p> <p>1 BY MS. LEVIN: 2 Q. -- letter of Exhibit 4 with Exhibit 6? 3 A. They appear to be related. 4 Q. Exhibit 6 appears to be the letter 5 Ms. Marmer was referring to in Exhibit 4, doesn't 6 it? 7 (Discussion off the stenographic 8 record.) 9 THE WITNESS: It appears to be related. 10 I'm not going to deny it. 11 MR. MURRAY: I think we are taking a 12 break. 13 THE WITNESS: Yeah. 14 THE VIDEOGRAPHER: We are going off the 15 record. This is the end of Disk 1. Time on video 16 is 11:15. 17 (Recess taken.) 18 THE VIDEOGRAPHER: We are going back on 19 the record. This is the beginning of Disk 2. Time 20 on video is 11:26. 21 BY MS. LEVIN: 22 Q. Mr. Pruett, I'd like to just ask another 23 couple of questions about Exhibit 6, if you have 24 that in front of you. 25 A. I do.</p>
<p style="text-align: right;">87</p> <p>1 seriously and, second, to encourage our suppliers to 2 review the practices adopted by McDonald's and the 3 recommendations contained in your letter. 4 Is that correct? 5 A. That's how it reads. 6 Q. And in Exhibit 6, which you cannot link 7 to Exhibit 4 at all, it states [reading]: First, I 8 want to share copies of the three letters we have 9 received from PETA and let you know that we take the 10 organization's concerns seriously. 11 Is that correct? 12 A. That's how it reads. 13 Q. And then it says [reading]: I want to 14 encourage you to review the practices adopted by 15 McDonald's and the recommendations contained in 16 PETA's letter; correct? 17 A. That's how it reads. 18 Q. And it further says [reading]: I want 19 to let you know that we take the organization's 20 concerns seriously. 21 A. That's what it says. 22 Q. And yet you are unable to link the 23 language in Ms. Marmer's -- 24 MR. MURRAY: Objection; 25 mischaracterizes --</p>	<p style="text-align: right;">89</p> <p>1 Q. Under -- about halfway down the first 2 page, it says Egg Production, and then it lists: 3 Prohibit forced molting; require that cages, if 4 used, be at least 72 square inches; prohibit battery 5 cages; and prohibit debeaking? 6 Do you see that part? 7 A. I do. 8 Q. Does that refresh your recollection from 9 any of your conversations with Ms. Marmer or any of 10 your review of documents about the issues that were 11 of concern at Kroger with respect to animal welfare 12 for egg-laying hens? 13 MR. MURRAY: Object to the form of the 14 question. 15 THE WITNESS: As I indicated, we did not 16 specifically talk about the requirements. We talked 17 about the UEP guidance. And that was the level of 18 detail we got into our conversations. 19 BY MS. LEVIN: 20 Q. Do you understand that the guidelines 21 that were ultimately adopted by Kroger, in fact, 22 have provisions pertaining to molting, cage space 23 and debeaking? 24 A. Yes; because they're articulated in UEP 25 guidelines.</p>

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24 (Pages 90 to 93)

<p style="text-align: right;">90</p> <p>1 MS. LEVIN: Let's mark as Exhibit 7 a 2 document bearing Bates No. KRGE00020412 through 14. 3 (Kroger Exhibit 7 was marked for 4 identification.) 5 MR. MURRAY: Thank you. 6 (Pause.) 7 THE WITNESS: I reviewed the exhibit, 8 Kroger 7. 9 BY MS. LEVIN: 10 Q. So you had a chance to review Kroger 11 Exhibit 7? 12 A. I have. 13 Q. And what is Kroger Exhibit 7? 14 A. It is a note or memo dated January 8, 15 2001, from Lynn Marmer to Joe Pichler. 16 Q. And I believe you testified earlier that 17 Mr. Pichler was the CEO of Kroger in 2001? 18 A. Yes. 19 Q. Did Ms. Marmer report directly to 20 Mr. Pichler; do you know? 21 A. I do not know. 22 Q. But apparently on the issue of animal 23 welfare guidelines, she was reporting to Mr. Pichler 24 in Exhibit 7? 25 MR. MURRAY: Objection to the form of</p>	<p style="text-align: right;">92</p> <p>1 to upper management in the conversations I had with 2 Lynn Marmer. 3 Q. But, in any event, as of January 8, 4 2001, Ms. Marmer was reporting to Mr. Pichler on 5 FMI's work on animal welfare issues; correct? 6 A. That's what it appears to be reported on 7 in this letter. 8 Q. And do you have any reason to doubt that 9 Ms. Marmer sent this memo to Mr. Pichler on 10 January 8, 2001? 11 A. It appears that she did. 12 Q. Was this a document that you reviewed 13 with Ms. Marmer in your preparation for your 14 deposition today? 15 A. I am not familiar with this document. 16 Q. In the second paragraph of Exhibit 7, 17 Ms. Marmer writes, "All of us are comfortable with 18 the background paper that FMI wrote entitled Animal 19 Welfare Issue." 20 Do you see that? 21 A. Yes. 22 Q. She says, "I suggested that they reorder 23 the policy suggestions; but, otherwise, the 24 substance was fine." 25 Do you see that?</p>
<p style="text-align: right;">91</p> <p>1 the question. 2 THE WITNESS: It appears that she was 3 reporting information about animal welfare to 4 Mr. Pichler. 5 BY MS. LEVIN: 6 Q. Did Ms. Marmer tell you that the issue 7 of animal welfare guidelines was important to 8 Mr. Pichler? 9 A. That was not in our conversation. 10 Q. Did Ms. Marmer tell you that animal 11 welfare guidelines were important to Kroger 12 management at the highest echelons? 13 MR. MURRAY: Object to the form of the 14 question. 15 THE WITNESS: Important in what way? 16 BY MS. LEVIN: 17 Q. Important in that it was an issue that 18 the company wanted to devote resources to. 19 A. That did not specifically come up in our 20 conversation. 21 Q. Did something general come up in your 22 conversations with respect to upper management's 23 views towards animal welfare guidelines in 2001? 24 A. I don't remember any conversations about 25 the feelings or importance of animal welfare issues</p>	<p style="text-align: right;">93</p> <p>1 A. Yes. 2 Q. Do Pages 2 and 3 of Exhibit 7 appear to 3 be the animal welfare background paper that 4 Ms. Marmer is referencing? 5 A. It does appear to be that. 6 Q. And Ms. Marmer has stated that she 7 agrees with the substance of the second and third 8 page of Exhibit 7; correct? 9 A. It appears that she's doing so. 10 Q. In the second paragraph of the second 11 page of Exhibit 7 -- 12 A. Yes. 13 Q. -- it's stated [reading]: FMI believes 14 this -- "this" being animal welfare issues -- is an 15 industry issue of importance to all of its members 16 and, therefore, proposes the development of an 17 industry policy that can be shared with our 18 customers and our suppliers in the producer 19 community. 20 Is that correct? 21 A. That's how it reads. 22 Q. So Kroger agreed with that statement in 23 Exhibit 7; correct? 24 MR. MURRAY: Object to the form of the 25 question.</p>

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25 (Pages 94 to 97)

<p style="text-align: right;">94</p> <p>1 THE WITNESS: It says FMI believes. It 2 doesn't say Kroger believes. 3 BY MS. LEVIN: 4 Q. But Ms. Marmer says she agreed with the 5 substance of the background paper; correct? 6 MR. MURRAY: Object to the form of the 7 question; mischaracterizes the document. 8 THE WITNESS: I can't speak specifically 9 for Lynn Marmer whether she can speak for FMI and 10 their belief. 11 BY MS. LEVIN: 12 Q. I'm not asking about Ms. Marmer's view 13 of what FMI believed. I'm asking whether this 14 animal welfare issue background paper was a document 15 with which Kroger agreed. 16 A. It appears that Kroger was supporting 17 FMI's policies around animal welfare -- 18 Q. Yes. 19 A. -- based on what's written in this 20 letter. 21 Q. Right. Ms. Marmer says [reading]: All 22 of us are comfortable with the background paper that 23 FMI wrote; correct? 24 A. Yes. 25 Q. And part of the background paper with</p>	<p style="text-align: right;">96</p> <p>1 Q. The background paper further states, 2 [reading]: We -- being FMI -- are working to 3 identify animal welfare organizations and academic 4 experts to align ourselves with as we, FMI, develop 5 an animal welfare -- an industry animal welfare 6 policy and program. 7 Is that correct? 8 A. Where are you reading this? 9 Q. Under Current Activities. It's the 10 second sentence on the second page of Exhibit 7. 11 A. That's how it reads. 12 Q. That's another statement that Ms. Marmer 13 told Mr. Pichler she was comfortable with; correct? 14 A. That's what is written in the letter or 15 memo to Mr. Pichler. 16 Q. So according to this background paper 17 with which Ms. Marmer agreed, FMI was working to 18 develop an industry animal welfare policy; correct? 19 MR. MURRAY: Object to the form of the 20 question. It mischaracterizes the document. 21 THE WITNESS: That's how it reads; but I 22 cannot interpret what is meant by "develop," since I 23 was not with -- or working with Lynn Marmer in 2000. 24 BY MS. LEVIN: 25 Q. That's fine. We will let the jury</p>
<p style="text-align: right;">95</p> <p>1 which Ms. Marmer and, therefore, Kroger is 2 comfortable is, this is an issue -- industry issue 3 of importance to all of FMI's members -- 4 MR. MURRAY: Object to the form of the 5 question. 6 BY MS. LEVIN: 7 Q. -- and that an industry policy should be 8 developed that can be shared with customers and 9 suppliers; correct? 10 MR. MURRAY: Same objection. 11 THE WITNESS: That's how it reads. 12 BY MS. LEVIN: 13 Q. And Ms. Marmer supported that; correct? 14 MR. MURRAY: Object to the form of the 15 question. 16 THE WITNESS: I can only tell you what 17 is in this letter. 18 BY MS. LEVIN: 19 Q. And what it says is, Ms. Marmer is 20 comfortable with the background paper; correct? 21 A. That's how it reads. 22 Q. Did Ms. Marmer tell you that she was 23 uncomfortable with any background papers she 24 received from FMI? 25 A. She did not.</p>	<p style="text-align: right;">97</p> <p>1 interpret "develop" as they see fit. 2 MR. MURRAY: That comment is uncalled 3 for. 4 BY MS. LEVIN: 5 Q. At the end of Defendants' Exhibit 7, 6 Ms. Marmer writes, "Thank you for your support at 7 the FMI Board meeting." 8 Do you see that? 9 A. Which page? 10 Q. The first page. 11 A. First page. 12 Q. Ms. Marmer's email or memo. 13 A. Which sentence? 14 Q. The very last one: "Thank you for your 15 support at the FMI Board meeting." 16 A. I see that. 17 Q. Do you know whether Mr. Pichler was a 18 member of the FMI board? 19 A. I do not. 20 Q. Was Ms. Marmer a member of the FMI 21 board? 22 A. I don't know. 23 Q. Did you discuss with Ms. Marmer the fact 24 that Safeway had received a threatening letter from 25 PETA sometime in late 2000 or early 2001?</p>

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26 (Pages 98 to 101)

<p style="text-align: right;">98</p> <p>1 A. I don't remember specifically talking 2 about a letter to Safeway. 3 Q. Did Ms. Marmer tell you that, after 4 pressuring the chain restaurant industry, such as 5 McDonald's and Burger King, that PETA then began to 6 focus on grocery retailers? 7 A. We had general conversations around 8 that. 9 Q. What did she tell you? 10 A. She indicated that the retail industry 11 was being approached, much like the food service 12 companies. 13 Q. And did she say that at that time Kroger 14 was concerned about becoming the target of some sort 15 of campaign by PETA? 16 MR. MURRAY: Object to the form of the 17 question. 18 THE WITNESS: I don't remember her 19 specifically saying that. 20 BY MS. LEVIN: 21 Q. What do you remember her generally 22 saying? 23 A. That there was pressure that was 24 starting to occur with the retailer -- retailers, or 25 the retail companies, much like the pressure that</p>	<p style="text-align: right;">100</p> <p>1 customers were anxious to receive or purchase eggs 2 that had been produced in compliance with some sort 3 of animal welfare guidelines? 4 A. She only talked in terms of what the 5 company should do for its customers. She did not 6 specifically talk about customer feedback. 7 Q. Well, what do you mean "what the company 8 should do for its customers"? 9 A. That this was the right thing to do. 10 Q. So what the consumers were interested in 11 was not of interest to Ms. Marmer? 12 MR. MURRAY: Object to the form of the 13 question. Mischaracterizes his testimony. 14 THE WITNESS: I can't answer that for 15 Mrs. Marmer. 16 BY MS. LEVIN: 17 Q. You didn't discuss with Ms. Marmer 18 whether there was consumer interest in having eggs 19 available that had been produced by hens that had 20 been treated humanely? 21 A. We talked about in terms of what was 22 right for the company around animal welfare and what 23 the egg-layer companies or the egg-producing 24 companies should be doing. 25 But we did not talk about specific</p>
<p style="text-align: right;">99</p> <p>1 was occurring with the food service companies. 2 Q. And what was that pressure? 3 A. PETA was starting to approach retailers. 4 Q. Approach retailers to develop some sort 5 of animal welfare guidelines? 6 A. Yes. That was our general conversation. 7 Q. Did Ms. Marmer take PETA's concerns 8 seriously? 9 MR. MURRAY: Object to the form of the 10 question. Calls for speculation. 11 BY MS. LEVIN: 12 Q. You did interview Ms. Marmer; right? 13 A. I did. 14 Q. Did Ms. Marmer express to you any 15 concern about the pressure that PETA was putting on 16 Kroger? 17 A. She talked about animal welfare as 18 related to -- that was one factor, the pressure; 19 PETA; and maybe any other animal welfare -- excuse 20 me -- activist groups were putting on companies at 21 that time. 22 But she also spoke in terms of doing 23 what was right for the company and our customer. 24 Q. I understand. 25 Did Ms. Marmer have a view that</p>	<p style="text-align: right;">101</p> <p>1 consumer/customer feedback. 2 Q. I'm not interested in specific customer 3 feedback. 4 But when Kroger is deciding whether to 5 take a particular step, such as adopting animal 6 welfare guidelines, does it take into account 7 whether there's any demand for the product that will 8 result? 9 MR. MURRAY: Objection; calls for 10 speculation. 11 THE WITNESS: At that time, I can't tell 12 you what all the factors were -- all factors that 13 were considered in making that type of decision. 14 BY MS. LEVIN: 15 Q. I'm not asking for all factors. I'm 16 just wondering, asking whether consumer preference 17 was a factor that was taken into account. 18 THE WITNESS: I would only be 19 speculating. 20 BY MS. LEVIN: 21 Q. You didn't discuss that with Ms. Marmer? 22 A. Not specifically. 23 Q. So you have no idea one way or the other 24 whether consumers were interested in purchasing eggs 25 that had been produced from hens that had been</p>

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<p style="text-align: right;">102</p> <p>1 treated humanely?</p> <p>2 MR. MURRAY: Objection; calls for</p> <p>3 speculation.</p> <p>4 THE WITNESS: I don't remember</p> <p>5 specifically talking to Lynn Marmer about that.</p> <p>6 MS. LEVIN: Let's mark as Exhibit 8 a</p> <p>7 document that was obtained from the Kroger Web site.</p> <p>8 (Kroger Exhibit 8 was marked for</p> <p>9 identification.)</p> <p>10 THE WITNESS: I've reviewed Exhibit 8.</p> <p>11 BY MS. LEVIN:</p> <p>12 Q. And what is Exhibit 8?</p> <p>13 A. It is a press release dated July 3rd,</p> <p>14 2001.</p> <p>15 Q. And who issued the press release?</p> <p>16 A. Kroger.</p> <p>17 Q. Was this one of the press releases that</p> <p>18 you reviewed to prepare for your testimony today?</p> <p>19 A. I reviewed a 2002 press release.</p> <p>20 Q. But not Defendants' Exhibit 8?</p> <p>21 A. It's not on my list.</p> <p>22 Q. So can you read the first sentence of</p> <p>23 the second paragraph of Defendants' Exhibit 8, which</p> <p>24 begins, "Under the new program."</p> <p>25 Well, begin with the first sentence,</p>	<p style="text-align: right;">104</p> <p>1 Q. Do you know why Kroger issued</p> <p>2 Defendants' Exhibit 8?</p> <p>3 A. It wanted to make the public aware of</p> <p>4 what we were doing in regards to animal welfare.</p> <p>5 Q. And part of what you were doing was</p> <p>6 endorsing FMI's new program; correct?</p> <p>7 MR. MURRAY: Object to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: That's how it reads.</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. And Kroger further believed that the</p> <p>12 animal welfare experts recruited by FMI are</p> <p>13 well-respected national leaders in their fields; is</p> <p>14 that correct? It's about two-thirds of the way down</p> <p>15 the press release.</p> <p>16 A. That's how it reads.</p> <p>17 Q. And Kroger is working cooperatively with</p> <p>18 FMI and with egg producers to develop the</p> <p>19 guidelines; correct?</p> <p>20 A. That's how it reads.</p> <p>21 Q. It's not just how it reads; that's what</p> <p>22 Kroger told the world; correct?</p> <p>23 MR. MURRAY: Object to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: It's in the press release.</p>
<p style="text-align: right;">103</p> <p>1 frankly -- the first paragraph and the second</p> <p>2 paragraph.</p> <p>3 A. Okay. [Reading]: The Kroger Co. today</p> <p>4 endorsed the Food Marketing Institute's new program</p> <p>5 addressing animal welfare.</p> <p>6 MR. MURRAY: You missed the</p> <p>7 parenthetical when you read that.</p> <p>8 BY MS. LEVIN:</p> <p>9 Q. You want to start over and get that</p> <p>10 parenthetical as well?</p> <p>11 A. Yes. "The Kroger (NYSC: KR) today</p> <p>12 endorsed the Food Marketing Institute's new program</p> <p>13 addressing animal welfare.</p> <p>14 "Under the new program, FMI is working</p> <p>15 cooperatively with producers, processors and</p> <p>16 independent animal welfare experts to promote 'best</p> <p>17 practices' that will ensure animals are treated</p> <p>18 humanely at every step of the production process."</p> <p>19 Q. And it continues to state that FMI is</p> <p>20 working with advisers who include national experts</p> <p>21 in animal husbandry?</p> <p>22 A. Yes.</p> <p>23 Q. So far as you know, was Defendants'</p> <p>24 Exhibit 8 a correct statement on July 3, 2001?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">105</p> <p>1 BY MS. LEVIN:</p> <p>2 Q. And you have no reason to question the</p> <p>3 accuracy of the press release?</p> <p>4 A. I do not.</p> <p>5 MS. LEVIN: Let mark as Exhibit 9 a</p> <p>6 document bearing Bates No. PETA65 through 66.</p> <p>7 (Kroger Exhibit 9 was marked for</p> <p>8 identification.)</p> <p>9 (Pause.)</p> <p>10 THE WITNESS: I have reviewed Exhibit 9.</p> <p>11 BY MS. LEVIN:</p> <p>12 Q. Thank you.</p> <p>13 What is Exhibit 9?</p> <p>14 A. It's a letter to Lynn Marmer,</p> <p>15 September 27th, 2001, from Sean Gifford of PETA.</p> <p>16 Q. I believe you mentioned that some of the</p> <p>17 PETA correspondence that you viewed with Ms. Marmer</p> <p>18 was from 2001; and my question to you is whether</p> <p>19 Defendants' Exhibit 9 was one of the documents you</p> <p>20 reviewed with Ms. Marmer.</p> <p>21 A. This is not one of them.</p> <p>22 Q. What were the dates of the documents</p> <p>23 that you reviewed with Ms. Marmer?</p> <p>24 A. I have another one listed as 2001. It</p> <p>25 was a PETA correspondence to Mr. Pichler.</p>

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<p style="text-align: right;">106</p> <p>1 Q. Was that the only PETA correspondence 2 you reviewed with Ms. Marmer?</p> <p>3 A. And there was the one that I corrected 4 on 11/2000, a letter from Lynn Marmer to PETA.</p> <p>5 Q. Okay. But no other correspondence from 6 PETA other than the one to Mr. Pichler in 2001?</p> <p>7 A. That's what's on my list.</p> <p>8 Q. Let's take a look at the substance of 9 Exhibit 9. And if you look in the third full 10 paragraph of Exhibit 9, the second sentence, it 11 states: "Please understand that since PETA recently 12 called off its campaign against Wendy's (see 13 WickedWendy's.com), we will soon be turning our 14 attention to grocery store chains."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Is that a topic that you discussed with 18 Ms. Marmer?</p> <p>19 A. No.</p> <p>20 Q. Did you learn anything during the course 21 of your preparation about a statement by PETA that 22 it would soon be turning its attention to grocery 23 store chains?</p> <p>24 A. As I stated, I understood the 25 conversation I had with Lynn Marmer that there was</p>	<p style="text-align: right;">108</p> <p>1 pressure that was being put on food service 2 companies and that pressure was starting to be 3 directed towards retailers, including Kroger.</p> <p>4 Q. And what sort of pressure was being 5 placed?</p> <p>6 A. Communication, letters. I heard 7 something about phone calls.</p> <p>8 Q. It states in the -- well, at the end of 9 that paragraph [reading]: By acting now, Kroger can 10 avoid the humiliation of being branded a corporate 11 animal abuser.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Is that what you describe as pressure?</p> <p>15 MR. MURRAY: Object to the form of the 16 question.</p> <p>17 THE WITNESS: That did not specifically 18 come up in our conversation.</p> <p>19 BY MS. LEVIN:</p> <p>20 Q. But is that sentence something that you 21 would describe as pressure on Kroger?</p> <p>22 MR. MURRAY: Objection to the form of 23 the question.</p> <p>24 THE WITNESS: That could be a statement 25 that could be interpreted as pressure to any</p>
<p style="text-align: right;">107</p> <p>1 pressure on food service companies and that that 2 pressure was starting to be put on some retailers, 3 including Kroger.</p> <p>4 Q. And that pressure was coming from PETA; 5 correct?</p> <p>6 A. PETA is one activist group that I know 7 of.</p> <p>8 Q. What other activist groups?</p> <p>9 A. No other one came up.</p> <p>10 Q. So you did understand that at some point 11 in time PETA threatened Kroger that it would turn 12 its attention to grocery store chains; correct?</p> <p>13 MR. MURRAY: Object to the form of the 14 question.</p> <p>15 THE WITNESS: Threatened. I don't think 16 the term "threaten" was ever used. "Pressure" was a 17 term that was used.</p> <p>18 BY MS. LEVIN:</p> <p>19 Q. I accept that. PETA was pressuring 20 grocery store chains. You're more comfortable with 21 "pressuring"?</p> <p>22 A. We had some general conversation around 23 that.</p> <p>24 Q. And what was the general conversation?</p> <p>25 A. As I already stated, that there was</p>	<p style="text-align: right;">109</p> <p>1 retailer.</p> <p>2 BY MS. LEVIN:</p> <p>3 Q. Do you know whether Kroger took that as 4 pressure?</p> <p>5 MR. MURRAY: Object to the form of the 6 question, calls for speculation.</p> <p>7 THE WITNESS: I do not.</p> <p>8 BY MS. LEVIN:</p> <p>9 Q. You didn't discuss with Ms. Marmer what 10 she meant by "pressure"?</p> <p>11 A. We didn't get into that specifically.</p> <p>12 Q. She just told you that Kroger was 13 experiencing pressure from PETA?</p> <p>14 A. Yes.</p> <p>15 Q. But not what the pressure was?</p> <p>16 A. She did not get into details.</p> <p>17 Q. And you didn't ask her what she meant by 18 that?</p> <p>19 A. I did not.</p> <p>20 Q. In the last paragraph on the first page 21 of Exhibit 9, halfway through, Mr. Gifford writes 22 [reading]: What substantive steps, if any, has 23 Kroger taken to implement animal welfare guidelines 24 during the last 11 months of our communicating? 25 Do you see that?</p>

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<p style="text-align: right;">110</p> <p>1 A. I do.</p> <p>2 Q. Do you know what steps Kroger had taken</p> <p>3 in the last 11 months, which would be from</p> <p>4 October 2000 to September of 2001, to implement</p> <p>5 animal welfare guidelines?</p> <p>6 A. The only thing I can tell you from the</p> <p>7 conversation I had with Lynn Marmer is that we were</p> <p>8 working with FMI on having our suppliers adopt</p> <p>9 industry best practices -- began adopting industry</p> <p>10 best practices for animal welfare.</p> <p>11 I cannot speak specifically to that time</p> <p>12 frame.</p> <p>13 Q. Well, that's the time frame we've been</p> <p>14 looking at documents from that show communications</p> <p>15 with FMI; correct?</p> <p>16 A. Correct.</p> <p>17 MS. LEVIN: Let's mark as Exhibit 10 a</p> <p>18 document bearing Bates No. FMI 002427 to 2429.</p> <p>19 (Kroger Exhibit 10 was marked for</p> <p>20 identification.)</p> <p>21 BY MS. LEVIN:</p> <p>22 Q. Mr. Pruett, this is an email chain. And</p> <p>23 as you probably know, sometimes it's easier to start</p> <p>24 at the back and move forward. But the part of it</p> <p>25 I'm most interested in is the middle portion that is</p>	<p style="text-align: right;">112</p> <p>1 Do you see that, the last bullet point?</p> <p>2 A. Where is this?</p> <p>3 Q. The last bullet point in the email from</p> <p>4 Ms. Brown dated February 14th, 2002.</p> <p>5 A. "The timeline established for completing</p> <p>6 our work by June. This is an internal working</p> <p>7 document produced by FMI and NCCR only."</p> <p>8 Q. And then you go to Ms. Marmer's</p> <p>9 response. Ms. Marmer states, "I would like to urge</p> <p>10 FMI to move more quickly."</p> <p>11 Do you see that?</p> <p>12 A. Where are you reading that again? I</p> <p>13 see --</p> <p>14 Q. On the first page of Exhibit 10. Right</p> <p>15 underneath "lmarmer@kroger.com wrote." What</p> <p>16 lmarmer@kroger.com wrote was, "I would like to urge</p> <p>17 FMI to move more quickly."</p> <p>18 A. I see that.</p> <p>19 Q. Did you discuss with Ms. Marmer a</p> <p>20 concern that FMI was moving too slowly in 2002?</p> <p>21 A. I don't remember conversations about</p> <p>22 speed. I remember conversations about working with</p> <p>23 FMI and experts, scientific experts and other</p> <p>24 retailers to adopt best practices that could be used</p> <p>25 for the egg-producing industry. But I don't</p>
<p style="text-align: right;">111</p> <p>1 an email from Ms. Marmer.</p> <p>2 A. I've reviewed Exhibit 10.</p> <p>3 Q. And what is Exhibit 10?</p> <p>4 A. Well, it is an email chain. It appears</p> <p>5 to start with Karen Brown.</p> <p>6 Q. Ms. Brown is with FMI?</p> <p>7 A. Yes.</p> <p>8 And it was sent on 2/14/2002, 11:14 a.m.</p> <p>9 It's a bit fragmented. So I'm trying to -- it looks</p> <p>10 like Brian Dowling sent another email on 2/19/2002,</p> <p>11 5:02 p.m., to Lynn Marmer and some other</p> <p>12 individuals.</p> <p>13 Q. And in the middle, right below</p> <p>14 Mr. Dowling's email, there's one from Ms. Marmer;</p> <p>15 correct? To Karen, Ertharin and Brian.</p> <p>16 Do you see where it says</p> <p>17 "lmarmer@kroger.com wrote"?</p> <p>18 A. Yes, I see that.</p> <p>19 Q. That appears to be an email from</p> <p>20 Ms. Harmer?</p> <p>21 A. It does appear so.</p> <p>22 Q. So on the first email in the chain, the</p> <p>23 one from Karen Brown dated February 14th, 2002,</p> <p>24 Ms. Marmer writes that the timeline established for</p> <p>25 completing our work is June.</p>	<p style="text-align: right;">113</p> <p>1 remember a discussion about speed.</p> <p>2 Q. Would you agree that, as of</p> <p>3 February 2002, Ms. Marmer seems to be concerned that</p> <p>4 FMI is not moving quickly enough?</p> <p>5 MR. MURRAY: Object to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: That's how it reads.</p> <p>8 BY MS. LEVIN:</p> <p>9 Q. And Ms. Marmer then writes, "We started</p> <p>10 the joint process over a year ago, knowing that the</p> <p>11 activist community was looking to direct their</p> <p>12 efforts towards the grocery industry after their</p> <p>13 'successes' with McDonald's and Burger King."</p> <p>14 Do you see that?</p> <p>15 A. Which line again?</p> <p>16 Q. It's the next sentence after, "I would</p> <p>17 like to urge FMI to move more quickly."</p> <p>18 A. I see that.</p> <p>19 Q. Do you have any reason to doubt that</p> <p>20 what Ms. Marmer said in that sentence and the</p> <p>21 preceding sentence was true and correct at the time</p> <p>22 that she wrote it?</p> <p>23 MR. MURRAY: Objection; lack of</p> <p>24 foundation.</p> <p>25 THE WITNESS: I'm only reading how she</p>

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<p style="text-align: right;">114</p> <p>1 responded here.</p> <p>2 BY MS. LEVIN:</p> <p>3 Q. And you didn't discuss this email with</p> <p>4 Ms. Marmer; right?</p> <p>5 A. I did not.</p> <p>6 Q. You don't have any reason to believe</p> <p>7 that when Ms. Marmer wrote those sentences, she was</p> <p>8 not being truthful?</p> <p>9 MR. MURRAY: Objection; lack of</p> <p>10 foundation.</p> <p>11 THE WITNESS: I don't know how she felt</p> <p>12 at that moment when she wrote the letter.</p> <p>13 BY MS. LEVIN:</p> <p>14 Q. So it's possible Ms. Marmer was lying</p> <p>15 when she wrote those two sentences?</p> <p>16 MR. MURRAY: Objection. Lack of</p> <p>17 foundation.</p> <p>18 THE WITNESS: I can't speak for</p> <p>19 Ms. Marmer.</p> <p>20 BY MS. LEVIN:</p> <p>21 Q. You're here speaking on behalf of Kroger</p> <p>22 Company today, Mr. Pruett. You understand that,</p> <p>23 don't you?</p> <p>24 A. I do.</p> <p>25 Q. And do you have any doubt when</p>	<p style="text-align: right;">116</p> <p>1 Q. Ms. Marmer didn't ever tell you that any</p> <p>2 of her documents might contain inaccurate</p> <p>3 statements, did she?</p> <p>4 A. She did not indicate that to me.</p> <p>5 Q. Ms. Marmer didn't tell you that she</p> <p>6 changed her mind over the years about statements</p> <p>7 that she made with respect to FMI or the animal</p> <p>8 welfare program?</p> <p>9 MR. MURRAY: Object to the form of the</p> <p>10 question.</p> <p>11 THE WITNESS: That was never brought up</p> <p>12 in our conversations.</p> <p>13 BY MS. LEVIN:</p> <p>14 Q. On the Page 2428, the second page of</p> <p>15 Exhibit 10, Ms. Marmer writes in the first complete</p> <p>16 sentence: "As we have said all along, it is fine to</p> <p>17 have the processing community involved, but the work</p> <p>18 of the FMI group is to make advancements -- not just</p> <p>19 endorse the easiest route for processors."</p> <p>20 Do you see that sentence?</p> <p>21 A. Which line again?</p> <p>22 Q. It's the first full sentence on the</p> <p>23 second page of Exhibit 10.</p> <p>24 A. I see it.</p> <p>25 Q. Who is the processing community?</p>
<p style="text-align: right;">115</p> <p>1 Ms. Marmer wrote those sentences that she believed</p> <p>2 them to be true?</p> <p>3 MR. MURRAY: Same objection.</p> <p>4 THE WITNESS: I'm reading it like you</p> <p>5 are.</p> <p>6 BY MS. LEVIN:</p> <p>7 Q. I understand you're reading it like I</p> <p>8 am.</p> <p>9 Do you have any reason to believe that</p> <p>10 Ms. Marmer did not believe those sentences to be</p> <p>11 true when she wrote that?</p> <p>12 MR. MURRAY: Same objection, asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: Based on what I know about</p> <p>15 Lynn Marmer, she's truthful. And she meant what she</p> <p>16 meant at that time.</p> <p>17 BY MS. LEVIN:</p> <p>18 Q. Ms. Marmer didn't tell you that she ever</p> <p>19 came to regret any of the emails that she sent</p> <p>20 relating to the animal welfare program?</p> <p>21 MR. MURRAY: Objection to the form of</p> <p>22 the question.</p> <p>23 THE WITNESS: That never came up in a</p> <p>24 conversation.</p> <p>25 BY MS. LEVIN:</p>	<p style="text-align: right;">117</p> <p>1 A. I can't tell you how she was defining</p> <p>2 "processing community."</p> <p>3 Q. Well, what was the processing community?</p> <p>4 Retailers?</p> <p>5 MR. MURRAY: Objection to the form of</p> <p>6 the question.</p> <p>7 THE WITNESS: I would define "processing</p> <p>8 community" as manufacturers, suppliers.</p> <p>9 BY MS. LEVIN:</p> <p>10 Q. Suppliers. For example, suppliers of</p> <p>11 shell eggs and egg products?</p> <p>12 A. That's how --</p> <p>13 MR. MURRAY: Objection to the form of</p> <p>14 the question, calls for speculation.</p> <p>15 You can answer if you know.</p> <p>16 THE WITNESS: I'm telling you how I</p> <p>17 would define "processing community."</p> <p>18 BY MS. LEVIN:</p> <p>19 Q. Right. And that would be, amongst other</p> <p>20 things, egg producers; correct?</p> <p>21 MR. MURRAY: Objection; calls for</p> <p>22 speculation.</p> <p>23 THE WITNESS: Correct.</p> <p>24 BY MS. LEVIN:</p> <p>25 Q. So Kroger wanted to be in the vanguard</p>

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<p style="text-align: right;">118</p> <p>1 in terms of developing animal welfare guidelines; 2 correct? 3 MR. MURRAY: Object to the form of the 4 question. 5 THE WITNESS: I can only tell you what I 6 am reading and in my conversations with Lynn Marmer, 7 that we wanted to be a leader in animal welfare. 8 BY MS. LEVIN: 9 Q. And Kroger didn't want to just endorse 10 the easiest route for egg suppliers; correct? 11 MR. MURRAY: Object to the form of the 12 question. 13 THE WITNESS: That specifically did not 14 come up in our conversations. 15 BY MS. LEVIN: 16 Q. But that's what Ms. Marmer stated in her 17 memo, her email that's a part of Defendants' 18 Exhibit 10? 19 A. That's how it reads. 20 Q. And you have no reason to question the 21 accuracy of it? 22 MR. MURRAY: Objection; asked and 23 answered. 24 THE WITNESS: I can only tell you what 25 she wrote at that time.</p>	<p style="text-align: right;">120</p> <p>1 BY MS. LEVIN: 2 Q. And what is Exhibit 11? 3 A. It is an email from Karen Brown of FMI, 4 sent Wednesday, February 20th, 2002, 4:07 p.m. 5 Q. And one of the recipients of Defendants' 6 Exhibit 11 was Ms. Marmer; is that correct? 7 A. That is correct. 8 Q. In the second paragraph of Exhibit 11 -- 9 let's go to the first paragraph. 10 Ms. Brown writes [reading]: When we put 11 the program together, a major program piece was 12 identification and establishment of a credible group 13 of scientific advisers who could work with us. 14 Do you see that? 15 MR. MURRAY: "Who would work," not 16 "could." 17 BY MS. LEVIN: 18 Q. Do you see that? 19 A. Yes, I do. 20 Q. Did you understand from Ms. Marmer that 21 there was, in fact, a -- the establishment of a 22 credible group of scientific advisers by FMI to work 23 on animal welfare issues? 24 A. Yes, I did. 25 Q. And did Ms. Marmer ever tell you that</p>
<p style="text-align: right;">119</p> <p>1 BY MS. LEVIN: 2 Q. And you have no reason to question it, 3 do you? 4 MR. MURRAY: Same objection. 5 THE WITNESS: Based on what I know about 6 Lynn Marmer, I have no reason to question, based on 7 what I know about her to date. 8 BY MS. LEVIN: 9 Q. Well, do you have some reason to think 10 that Ms. Marmer has a history of untruthful conduct? 11 MR. MURRAY: Object to the form of the 12 question. 13 THE WITNESS: I do not. 14 MS. LEVIN: Let's mark as Exhibit 11 a 15 document bearing Bates number FMI-002422 through 16 2424. 17 (Kroger Exhibit 11 was marked for 18 identification.) 19 BY MS. LEVIN: 20 Q. You're welcome to read the whole 21 document. It's really just the first email that 22 appears in Exhibit 11 that I have questions about. 23 (Pause.) 24 THE WITNESS: I have reviewed 25 Exhibit 11.</p>	<p style="text-align: right;">121</p> <p>1 she questioned the credentials of that group of 2 scientific advisers? 3 A. There was no conversation specifically 4 about the credibility of the scientific advisers. 5 Q. But Ms. Marmer didn't tell you that she 6 had any doubts about the scientific advisors, did 7 she? 8 MR. MURRAY: Objection; asked and 9 answered. 10 THE WITNESS: She did not. 11 BY MS. LEVIN: 12 Q. In the second paragraph, Ms. Brown 13 writes, "In our work with the producer community, 14 our goal was to raise the bar -- and that has been 15 our mission and the basis of our discussions with 7 16 producer organizations. They are anxious to have 17 our experts endorse their guidelines and have been 18 working hard to make changes and get buy-in from 19 their members." 20 Do you see that? 21 A. I do. 22 Q. Did you have any discussions with 23 Ms. Marmer about that particular subject? 24 MR. MURRAY: Objection; overly broad. 25 THE WITNESS: Are you speaking about</p>

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<p style="text-align: right;">122</p> <p>1 seven producer organizations?</p> <p>2 BY MS. LEVIN:</p> <p>3 Q. Right. Do you know who the seven</p> <p>4 producer organizations were?</p> <p>5 A. I do not.</p> <p>6 Q. You do you know whether UEP was one of</p> <p>7 them?</p> <p>8 A. I can't tell from this communication who</p> <p>9 the seven producer organizations are.</p> <p>10 Q. Did Ms. Marmer tell you that the FMI</p> <p>11 experts ultimately endorsed what became the UEP</p> <p>12 guidelines for egg-laying hens?</p> <p>13 MR. MURRAY: Objection to the form of</p> <p>14 the question.</p> <p>15 THE WITNESS: I don't think she used the</p> <p>16 term "endorsed."</p> <p>17 BY MS. LEVIN:</p> <p>18 Q. What term did she use?</p> <p>19 A. When we talked about these advisers,</p> <p>20 they evaluated the work of the experts in the</p> <p>21 egg-producing industry to verify that the animal</p> <p>22 welfare practices were adequate.</p> <p>23 Q. And did the FMI experts conclude that</p> <p>24 what ultimately became the UEP animal welfare</p> <p>25 guidelines for egg-laying hens were adequate?</p>	<p style="text-align: right;">124</p> <p>1 science-based guidelines for the humane treatment of</p> <p>2 hens, did they?</p> <p>3 MR. MURRAY: Object to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: What I gathered from our</p> <p>6 conversations and what I know about FMI and the</p> <p>7 scientific advisory committee at that time is that</p> <p>8 the individuals who served on the committee had the</p> <p>9 overall qualifications to determine whether UEP's</p> <p>10 policies were adequate.</p> <p>11 BY MS. LEVIN:</p> <p>12 Q. And they, in fact, determined that what</p> <p>13 became the UEP guidelines for egg-laying hens were,</p> <p>14 in fact, adequate; correct?</p> <p>15 A. I would say they verified that they were</p> <p>16 adequate.</p> <p>17 MS. LEVIN: Let's mark as Exhibit 12 a</p> <p>18 document bearing Bates No. FMI-001078 through 1079.</p> <p>19 (Kroger Exhibit 12 was marked for</p> <p>20 identification.)</p> <p>21 MR. MURRAY: Are you going to give a</p> <p>22 copy to me?</p> <p>23 MS. LEVIN: Yeah.</p> <p>24 MR. MURRAY: Thank you.</p> <p>25 (Pause.)</p>
<p style="text-align: right;">123</p> <p>1 MR. MURRAY: Objection; calls for</p> <p>2 speculation.</p> <p>3 THE WITNESS: I can't speak to what the</p> <p>4 decision-making process was at that time.</p> <p>5 BY MS. LEVIN:</p> <p>6 Q. Well, Ms. Marmer never told you that the</p> <p>7 FMI experts had any reason to question the UEP</p> <p>8 guidelines for egg-laying hens, did she?</p> <p>9 A. Over the course of our conversation, it</p> <p>10 appeared that the scientific advisers who were</p> <p>11 working with FMI at that time were, for the most</p> <p>12 part, able to do the evaluation of the program that</p> <p>13 had already been developed by the industry.</p> <p>14 So I trust they knew their stuff.</p> <p>15 Q. And Ms. -- you said they were, for the</p> <p>16 most part, able to do the evaluation.</p> <p>17 What do you mean "for the most part"?</p> <p>18 A. I don't know the individuals in the</p> <p>19 panel. I'm saying that, for the most part, that</p> <p>20 they were qualified to do what they were charged to</p> <p>21 do.</p> <p>22 Q. But Ms. Marmer never told you or nobody</p> <p>23 at Kroger ever told you, did they, that the experts</p> <p>24 that FMI recruited ever questioned whether the UEP</p> <p>25 guidelines for egg-laying hens were, in fact,</p>	<p style="text-align: right;">125</p> <p>1 THE WITNESS: I reviewed Exhibit 12.</p> <p>2 BY MS. LEVIN:</p> <p>3 Q. What is Exhibit 12?</p> <p>4 A. It is an email from Karen Brown of FMI,</p> <p>5 to Lynn Marmer -- well, actually --</p> <p>6 Q. Chronologically speaking, it's first an</p> <p>7 email from Ms. Marmer to Karen Brown.</p> <p>8 A. To Karen Brown, and Karen Brown</p> <p>9 responds --</p> <p>10 Q. Right.</p> <p>11 A. -- to Lynn Marmer.</p> <p>12 Q. Dated March 20th, 2002; is that</p> <p>13 correct?</p> <p>14 A. That is correct.</p> <p>15 Q. Now, I think you testified earlier --</p> <p>16 and you'll correct me if I don't have your words</p> <p>17 exact. But you testified earlier that Ms. Marmer</p> <p>18 told you that having industry-wide guidelines were</p> <p>19 important; is that correct?</p> <p>20 MR. MURRAY: Object to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: She told me that having</p> <p>23 guidelines for -- harmonized, standardized</p> <p>24 guidelines for the retail industry was important</p> <p>25 relative to animal welfare.</p>

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<p style="text-align: right;">126</p> <p>1 BY MS. LEVIN:</p> <p>2 Q. And that Kroger did not want to develop</p> <p>3 its own guidelines; correct?</p> <p>4 A. We did not.</p> <p>5 Q. Did she tell you why Kroger did not want</p> <p>6 to develop its own guidelines?</p> <p>7 A. Because we're not in a position to</p> <p>8 develop our own guidelines.</p> <p>9 Q. You need experts to do that; is that</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. And in this document, Ms. Marmer</p> <p>13 provides two reasons why it's important to have</p> <p>14 industry-wide guidelines; correct?</p> <p>15 Sort of in the middle of the page.</p> <p>16 A. Which sentence or sentences are you</p> <p>17 specifically referring to?</p> <p>18 Q. "There are two purposes to having an</p> <p>19 industry-wide group."</p> <p>20 A. Yes, I see that.</p> <p>21 Q. What were the two reasons Ms. Marmer</p> <p>22 gave?</p> <p>23 A. To not allow advocacy groups to pit one</p> <p>24 retailer against another and to move the industry</p> <p>25 standards so if there are costs, they're shared</p>	<p style="text-align: right;">128</p> <p>1 Q. Because you didn't ask her anything</p> <p>2 about this particular subject?</p> <p>3 MR. MURRAY: Same objection.</p> <p>4 THE WITNESS: We did not discuss this</p> <p>5 specific email.</p> <p>6 BY MS. LEVIN:</p> <p>7 Q. Well, I'm setting to one side the email;</p> <p>8 did you discuss the topic of costs that might result</p> <p>9 from animal welfare guidelines?</p> <p>10 A. We did not specifically talk about cost.</p> <p>11 Q. You have no reason to believe that</p> <p>12 anything Ms. Marmer wrote in Defendants' Exhibit 12</p> <p>13 was incorrect or inaccurate, do you?</p> <p>14 MR. MURRAY: Objection; lack of</p> <p>15 foundation.</p> <p>16 THE WITNESS: I can't tell you</p> <p>17 specifically if it was accurate or not.</p> <p>18 BY MS. LEVIN:</p> <p>19 Q. You have no reason to question the</p> <p>20 accuracy of Ms. Marmer's words, do you?</p> <p>21 A. In my general interactions and work with</p> <p>22 Lynn Marmer, I find her to be accurate and reliable</p> <p>23 and truthful.</p> <p>24 Q. Let's mark as Exhibits --</p> <p>25 MR. MURRAY: It's 12:30. If you're</p>
<p style="text-align: right;">127</p> <p>1 across the industry.</p> <p>2 Q. Did you have any discussion with</p> <p>3 Ms. Marmer about what she meant in this email?</p> <p>4 A. We did not specifically talk about this</p> <p>5 email.</p> <p>6 Q. Did you have any discussions about costs</p> <p>7 associated with animal welfare guidelines?</p> <p>8 A. We did not.</p> <p>9 Q. So you don't know whether -- well,</p> <p>10 Ms. Marmer appears to have understood, in</p> <p>11 Defendants' Exhibit 12, that there might be costs</p> <p>12 associated with implementation of animal welfare</p> <p>13 guidelines; correct?</p> <p>14 MR. MURRAY: Objection; mischaracterizes</p> <p>15 the document, calls for speculation.</p> <p>16 THE WITNESS: That's how it reads.</p> <p>17 BY MS. LEVIN:</p> <p>18 Q. And she wanted to be sure that if there</p> <p>19 were such costs, everybody shared them equally;</p> <p>20 correct?</p> <p>21 MR. MURRAY: Objection; mischaracterizes</p> <p>22 the document, calls for speculation.</p> <p>23 THE WITNESS: I can't speak for what she</p> <p>24 meant when she wrote that.</p> <p>25 BY MS. LEVIN:</p>	<p style="text-align: right;">129</p> <p>1 switching to another document, let's take a lunch</p> <p>2 break.</p> <p>3 MS. LEVIN: Okay. That's fine.</p> <p>4 THE VIDEOGRAPHER: We are going off the</p> <p>5 record. This is the end of Disk 2, time on video is</p> <p>6 12:29.</p> <p>7 (Luncheon recess from 12:29 p.m.</p> <p>8 to 1:25 p.m.)</p> <p>9 THE VIDEOGRAPHER: We are going back on</p> <p>10 the record. Time on video is 13:25. This is the</p> <p>11 beginning of Disk 3.</p> <p>12 MS. LEVIN: I asked that the court</p> <p>13 reporter mark as Exhibit 13 a document bearing</p> <p>14 Bates No. FMI-001297.</p> <p>15 (Kroger Exhibit 13 was marked for</p> <p>16 identification.)</p> <p>17 (Pause.)</p> <p>18 THE WITNESS: I reviewed Exhibit 13.</p> <p>19 BY MS. LEVIN:</p> <p>20 Q. And what is Exhibit 13?</p> <p>21 A. It is a letter dated May 21st, 2002,</p> <p>22 it looks like, from Bruce Friedrich; or maybe a</p> <p>23 press release. Am I correct?</p> <p>24 Q. On the right-hand side, it says "News</p> <p>25 release."</p>

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<p style="text-align: right;">130</p> <p>1 Do you see that?</p> <p>2 A. Yes, news release. All right. It's a</p> <p>3 news release.</p> <p>4 Q. A news release by PETA?</p> <p>5 A. By PETA.</p> <p>6 Q. And it's dated May 21, 2002?</p> <p>7 A. Yes.</p> <p>8 Q. And does it appear that this document,</p> <p>9 from the fax line at the top of the page, was</p> <p>10 received by Kroger?</p> <p>11 A. It does.</p> <p>12 Q. Do you know -- there's a little thing on</p> <p>13 the middle of the upper page that looks like sort of</p> <p>14 a Post-It type thing that people use for sending</p> <p>15 faxes. Do you see where I'm talking about?</p> <p>16 A. The box?</p> <p>17 Q. Yeah, the box.</p> <p>18 A. Yes.</p> <p>19 Q. And it says it's from Talithia Grant.</p> <p>20 Do you know who Ms. Grant is?</p> <p>21 A. I do not.</p> <p>22 Q. What about the handwritten name; do you</p> <p>23 recognize that name?</p> <p>24 A. David Holtham.</p> <p>25 Q. Holthouse? Holtham? I'm not sure.</p>	<p style="text-align: right;">132</p> <p>1 A. No.</p> <p>2 Q. So you have no way of disputing whether</p> <p>3 PETA was, in fact, organizing or contemplating</p> <p>4 organizing a boycott against Kroger?</p> <p>5 MR. MURRAY: Objection; lack of</p> <p>6 foundation.</p> <p>7 THE WITNESS: I can't speak to it.</p> <p>8 BY MS. LEVIN:</p> <p>9 Q. One way or the other?</p> <p>10 A. No.</p> <p>11 Q. Do you know -- there's a reference in</p> <p>12 the text of this press release to a Safeway</p> <p>13 Campaign. That's the end of the second full</p> <p>14 paragraph. Do you see -- it's the last two words,</p> <p>15 literally, of the paragraph.</p> <p>16 A. "Its Safeway Campaign"?</p> <p>17 Q. Right. Do you know what the Safeway</p> <p>18 Campaign was?</p> <p>19 A. I do not.</p> <p>20 Q. Did Ms. Marmer or anyone that you</p> <p>21 interviewed tell you that in May of 2002 PETA was</p> <p>22 stepping up its pressure on Kroger to develop animal</p> <p>23 welfare guidelines?</p> <p>24 A. All I know in the conversations I had</p> <p>25 with Lynn Marmer is that PETA was in general putting</p>
<p style="text-align: right;">131</p> <p>1 A. I do not recognize --</p> <p>2 Q. I was hoping maybe you would be able to</p> <p>3 tell us who that is.</p> <p>4 Is the fax number there, (513) 621-3962,</p> <p>5 a Kroger fax number?</p> <p>6 A. I can tell you that 513 is our area</p> <p>7 code. I can't tell you 621-3962 is a fax number in</p> <p>8 our building.</p> <p>9 Q. Okay. Does a review of this -- well, is</p> <p>10 this a document that you reviewed in preparation for</p> <p>11 your testimony today?</p> <p>12 A. I did not.</p> <p>13 Q. The heading of it is "PETA Eyes Kroger</p> <p>14 for Cruelty Boycott."</p> <p>15 Does that refresh your recollection</p> <p>16 about any conversations you had with Ms. Marmer or</p> <p>17 any of the other persons that you interviewed to</p> <p>18 prepare for your deposition about the pressure that</p> <p>19 PETA was putting on Kroger to develop animal welfare</p> <p>20 guidelines?</p> <p>21 A. There were no references to a cruelty</p> <p>22 boycott.</p> <p>23 Q. Were there any references, from anybody</p> <p>24 to any kind of boycott being organized or</p> <p>25 orchestrated by PETA?</p>	<p style="text-align: right;">133</p> <p>1 pressure on Kroger and other retailers to strengthen</p> <p>2 animal welfare guidelines. But any specific</p> <p>3 reference to a boycott or, you know, the situation</p> <p>4 at Safeway, we did not discuss that.</p> <p>5 Q. Did Ms. Marmer or anyone that you</p> <p>6 interviewed tell you that, over time, PETA increased</p> <p>7 its pressure from its initial letters in 2000?</p> <p>8 A. We did not talk about increased</p> <p>9 pressure. We just talked about pressure.</p> <p>10 Q. Let's move on to a document which will</p> <p>11 be marked as Exhibit 14.</p> <p>12 (Kroger Exhibit 14 was marked for</p> <p>13 identification.)</p> <p>14 MS. CRABTREE: Do you have a Bates label</p> <p>15 for this document?</p> <p>16 MS. LEVIN: Oh, I'm sorry. Yes. It's</p> <p>17 MPS00121367 through 368.</p> <p>18 MS. CRABTREE: Okay. Thank you.</p> <p>19 MR. MURRAY: I don't have a Bates number</p> <p>20 on this. Is this --</p> <p>21 MS. CRABTREE: I don't think it's the</p> <p>22 same.</p> <p>23 MS. LEVIN: Oh, I'm sorry. The Bates</p> <p>24 number I read to you is the produced version, which</p> <p>25 was cut off. So if you're curious as to what the</p>

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<p style="text-align: right;">134</p> <p>1 document looks like, that is, for those of you on 2 the phone, you can pull that up and see it. It's 3 the May 31, 2002, press release; but I obtained it 4 from the Kroger Web site, because the one that was 5 produced in litigation, for some reason you can't 6 read the whole text.</p> <p>7 THE WITNESS: I've reviewed Exhibit 14.</p> <p>8 BY MS. LEVIN:</p> <p>9 Q. What is Exhibit 14?</p> <p>10 A. It's a press release.</p> <p>11 Q. By Kroger Company?</p> <p>12 A. Yes.</p> <p>13 Q. And it's dated May 31, 2002?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know whether this press release 16 remains on the Kroger Web site today?</p> <p>17 A. I believe it is archived.</p> <p>18 Q. But it's available for the public to 19 review; correct?</p> <p>20 A. I believe that's true.</p> <p>21 Q. Why does Kroger maintain this press 22 release on its Web site?</p> <p>23 A. Specifically, this press release, I 24 can't tell you. I know that we archive a lot of 25 press releases, not just for animal welfare.</p>	<p style="text-align: right;">136</p> <p>1 Q. And it has responsibilities in that 2 regard, to make sure that its public announcements 3 are true and accurate; correct?</p> <p>4 MR. MURRAY: Object to the form of the 5 question, calls for a legal conclusion.</p> <p>6 THE WITNESS: Again, I will say that I 7 believe the company makes every effort to ensure 8 that the information that's provided on its Web site 9 is accurate and reliable.</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. Did you learn anything in the course of 12 your review that would suggest to you that 13 Defendants' Exhibit 14 was not true and accurate at 14 the time it was issued?</p> <p>15 A. I did not.</p> <p>16 Q. Did you learn anything in the course of 17 your investigation that would suggest to you that 18 the statements made in the December -- I'm sorry -- 19 in Defendants' Exhibit 14 were not true and correct 20 from May 31st, 2002, until this day?</p> <p>21 A. Nothing in my investigation suggests 22 that any of this information is not accurate.</p> <p>23 Q. Let's turn to the body of the press 24 release itself.</p> <p>25 Press release says that FMI began</p>
<p style="text-align: right;">135</p> <p>1 Q. But if this press release is on the 2 Kroger Web site today, then Kroger is of the view 3 that it's correct and accurate; is that right?</p> <p>4 MR. MURRAY: Object to the form of the 5 question.</p> <p>6 THE WITNESS: I can't tell you that. I 7 don't know who is responsible for viewing, you know, 8 whether this is still relevant or accurate for 9 today.</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. Well, would Kroger keep a press release 12 on its Web site that was incorrect?</p> <p>13 A. I'm not responsible for reviewing the 14 press releases, so I can't speak to that.</p> <p>15 Q. I understand that you're not responsible 16 for reviewing the press releases, Mr. Pruett. But 17 my question was different.</p> <p>18 My question was whether Kroger would 19 keep a press release on its Web site if it thought 20 it was inaccurate or incorrect.</p> <p>21 A. I will say that the company makes every 22 effort it can to assure that the information it has 23 on its Web site is accurate and reliable.</p> <p>24 Q. It's a publicly held company; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">137</p> <p>1 reviewing the issue of animal welfare in 2001 at the 2 request of its member companies, including Kroger, 3 Albertsons, Safeway and others.</p> <p>4 Do you see that? It's the second 5 sentence of the press release --</p> <p>6 A. Yes.</p> <p>7 Q. -- or the second paragraph.</p> <p>8 That statement is true and correct to 9 the best of your knowledge?</p> <p>10 A. Yes.</p> <p>11 Q. That further states, later in that 12 paragraph "FMI and NCCR have been working with their 13 members and leading animal welfare experts to 14 develop science-based guidelines that will 15 strengthen animal welfare practices across species."</p> <p>16 Do you see that sentence?</p> <p>17 A. I do.</p> <p>18 Q. And in the course of your investigation, 19 did you find that sentence to be true and correct?</p> <p>20 A. I believe it's accurate.</p> <p>21 Q. Further down in the press release, after 22 the list of the animal welfare experts, the second 23 paragraph after that, it says "Kroger said -- today 24 said it will communicate the guidelines to its 25 suppliers and will require its suppliers to adopt</p>

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<p style="text-align: right;">138</p> <p>1 them."</p> <p>2 Is that correct?</p> <p>3 A. That's how I read it.</p> <p>4 Q. And as far as you know, based on your</p> <p>5 investigation, that statement was true and correct?</p> <p>6 A. Yes.</p> <p>7 Q. Kroger intended to take FMI-developed</p> <p>8 guidelines and require their suppliers to adopt</p> <p>9 them; correct?</p> <p>10 MR. MURRAY: Object to the form of the</p> <p>11 question.</p> <p>12 THE WITNESS: What I know in my</p> <p>13 conversations about this particular document</p> <p>14 involving Lynn Marmer was that we wanted to begin</p> <p>15 communicating our requirements for animal welfare</p> <p>16 with our suppliers.</p> <p>17 BY MS. LEVIN:</p> <p>18 Q. And your requirements were those that</p> <p>19 FMI and NCCR had been working with their members and</p> <p>20 leading animal welfare experts to develop; correct?</p> <p>21 MR. MURRAY: Object to the form of the</p> <p>22 question.</p> <p>23 MS. LEVIN: I'm reading right here from</p> <p>24 the press release.</p> <p>25 THE WITNESS: That's how the press</p>	<p style="text-align: right;">140</p> <p>1 Q. What kind of industry?</p> <p>2 A. The retail industries, that's the</p> <p>3 membership. And NCCR would be the food service</p> <p>4 industry.</p> <p>5 Q. So when you say "working with industry,"</p> <p>6 you mean with grocery retailers and with food</p> <p>7 service/restaurants?</p> <p>8 A. Within the context of this sentence, I</p> <p>9 would say that's true.</p> <p>10 Q. Okay. And later down in the</p> <p>11 paragraph -- I'm sorry.</p> <p>12 Later down in the document, in the</p> <p>13 paragraph that says "we look forward to the</p> <p>14 guidelines"?</p> <p>15 A. Yes.</p> <p>16 Q. Ms. Marmer is quoted: "We strongly</p> <p>17 believe this joint industry effort, with retailers</p> <p>18 and restaurants working together with leading animal</p> <p>19 welfare experts, will make" -- can't see what the</p> <p>20 word is.</p> <p>21 MR. MURRAY: "Progress."</p> <p>22 MS. LEVIN: Will make what?</p> <p>23 MR. MURRAY: "More progress."</p> <p>24 BY MS. LEVIN:</p> <p>25 Q. -- "more progress in the humane</p>
<p style="text-align: right;">139</p> <p>1 release reads.</p> <p>2 BY MS. LEVIN:</p> <p>3 Q. Well, and that's what you learned from</p> <p>4 Ms. Marmer; correct?</p> <p>5 A. That she had been working with FMI and</p> <p>6 that FMI had appointed this group of scientific</p> <p>7 advisers to work with industry experts and the</p> <p>8 different businesses.</p> <p>9 I'm reading this as, you know, several</p> <p>10 businesses, not just egg layers, to develop</p> <p>11 guidelines or standards for their businesses to</p> <p>12 assure best practices in animal welfare.</p> <p>13 Q. But this document says FMI and NCCR have</p> <p>14 been working with their members -- that would be</p> <p>15 Kroger, Albertsons, Safeway; correct?</p> <p>16 A. Uh-huh, that's what it says.</p> <p>17 Q. -- and leading animal welfare experts to</p> <p>18 develop science-based guidelines.</p> <p>19 Where do you get the "working with the</p> <p>20 industry" piece from that?</p> <p>21 MR. MURRAY: Object to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: I would take the members</p> <p>24 as industry.</p> <p>25 BY MS. LEVIN:</p>	<p style="text-align: right;">141</p> <p>1 treatment of animals than any company could achieve</p> <p>2 by acting alone."</p> <p>3 Do you see that sentence?</p> <p>4 A. Yes.</p> <p>5 Q. So that was the point you've made</p> <p>6 earlier today about Ms. Marmer saying that it was</p> <p>7 important to have an industry-wide effort to develop</p> <p>8 a single standard that could be practiced by all;</p> <p>9 correct?</p> <p>10 A. Single, harmonized standard; correct.</p> <p>11 Q. And it was Kroger's hope that the retail</p> <p>12 grocery industry would adopt this uniform standard;</p> <p>13 correct?</p> <p>14 MR. MURRAY: Object to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: It was -- I don't know if</p> <p>17 I could say that it was Kroger's hope. But it was,</p> <p>18 in working with FMI, that the industry would adopt</p> <p>19 guidelines. I don't know if I can say at that time</p> <p>20 Kroger was saying, "Safeway, you need to do this."</p> <p>21 But they were working in collaboration,</p> <p>22 according to Lynn Marmer, with other retailers at</p> <p>23 FMI to have these standards developed.</p> <p>24 BY MS. LEVIN:</p> <p>25 Q. And the hope was that the whole industry</p>

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<p style="text-align: right;">142</p> <p>1 would adopt the same standard; correct?</p> <p>2 MR. MURRAY: Object to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: In my conversations with</p> <p>5 Lynn Marmer, that's how I understood it.</p> <p>6 BY MS. LEVIN:</p> <p>7 Q. Now, in the next paragraph, there's a</p> <p>8 reference to recommendations for auditing and</p> <p>9 monitoring compliance.</p> <p>10 Do you see that, in the third line down?</p> <p>11 A. Which paragraph again?</p> <p>12 Q. The very bottom.</p> <p>13 A. Okay.</p> <p>14 Q. I'm sorry. I'm looking at a different</p> <p>15 version of this. It's a cut-off one. But the</p> <p>16 paragraph that says, She said the FMI/NCCR -- do you</p> <p>17 see that paragraph?</p> <p>18 A. Yes.</p> <p>19 Q. It's the next-to-the-last paragraph on</p> <p>20 the version you're looking at.</p> <p>21 A. Yes.</p> <p>22 Q. She makes a reference to recommendations</p> <p>23 for auditing and monitor compliance.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">144</p> <p>1 thought we just agreed that FMI and NCCR were</p> <p>2 working with their members and -- to develop the</p> <p>3 guidelines.</p> <p>4 A. Well, the way I understood it and the</p> <p>5 conversations I had with Lynn Marmer is that they</p> <p>6 were evaluating guidelines that had already been</p> <p>7 developed by the egg producers through UEP, and they</p> <p>8 were already implementing some of those standards.</p> <p>9 Q. So this sentence in the May 31st, 2002</p> <p>10 press release is incorrect?</p> <p>11 MR. MURRAY: Object to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: I can't tell you -- again,</p> <p>14 as I said earlier, develop? I'm not certain in what</p> <p>15 context they mean.</p> <p>16 BY MS. LEVIN:</p> <p>17 Q. Well, I thought you had told me that</p> <p>18 this sentence in the press release was correct, that</p> <p>19 FMI and NCCR had been working with their members and</p> <p>20 leading animal welfare experts to develop</p> <p>21 science-based guidelines.</p> <p>22 Are you now telling me that's incorrect?</p> <p>23 MR. MURRAY: Object to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: I'm not telling you it's</p>
<p style="text-align: right;">143</p> <p>1 Q. Did you talk with Ms. Marmer about what</p> <p>2 she meant by that?</p> <p>3 A. We did not talk about this specific</p> <p>4 statement.</p> <p>5 Q. Did you talk with her at all about the</p> <p>6 need to monitor compliance with animal welfare</p> <p>7 guidelines?</p> <p>8 A. When you say "the need to monitor," in</p> <p>9 what context are you asking?</p> <p>10 Q. Well, I'm just looking at this sentence.</p> <p>11 And so I'll add some elaboration as to what I take</p> <p>12 from it, which is whether there was a need to</p> <p>13 monitor compliance by, for example, egg producers</p> <p>14 with the guidelines.</p> <p>15 A. We were, in the discussions I had with</p> <p>16 Lynn Marmer, we were supportive of a process where</p> <p>17 the egg producers would supply annual audits to</p> <p>18 ensure that they continued to adhere to the UEP</p> <p>19 guidelines.</p> <p>20 Q. And why was that important?</p> <p>21 A. Because we wanted to make sure that they</p> <p>22 are meeting animal welfare standards; that the</p> <p>23 industry -- their industry had developed and agreed</p> <p>24 upon.</p> <p>25 Q. Well, when you say "their industry," I</p>	<p style="text-align: right;">145</p> <p>1 incorrect, but I can't speak to the context of every</p> <p>2 word, what they mean specifically by "develop."</p> <p>3 BY MS. LEVIN:</p> <p>4 Q. Did you understand from Ms. Marmer that</p> <p>5 FMI and NCCR were working with their members --</p> <p>6 Kroger, Safeway, Albertsons -- and leading animal</p> <p>7 welfare experts to develop science-based guidelines?</p> <p>8 A. I understood that they were working with</p> <p>9 the industry, other retail members to evaluate --</p> <p>10 and this is how I interpreted it -- standards that</p> <p>11 were already in development or existing in the</p> <p>12 egg-producing industry.</p> <p>13 Q. But that's not what the press release</p> <p>14 that's in Exhibit 14 says, is it?</p> <p>15 A. No. It's --</p> <p>16 MR. MURRAY: Object to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: I'm reading it like you</p> <p>19 are. But, like I said, I can't tell you, again,</p> <p>20 exactly what they mean by "develop."</p> <p>21 BY MS. LEVIN:</p> <p>22 Q. So it was your understanding from your</p> <p>23 conversation with Ms. Marmer that, regardless of</p> <p>24 what this press release may or may not mean, that</p> <p>25 the FMI panel of experts was reviewing guidelines</p>

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<p style="text-align: right;">146</p> <p>1 that were, in fact, developed by someone else?</p> <p>2 A. By UEP.</p> <p>3 Q. And that those scientists ultimately</p> <p>4 endorsed the guidelines that were developed by UEP?</p> <p>5 A. I would say they accepted them based on</p> <p>6 good science. That they evaluated what was there</p> <p>7 and then they supported those as being adequate</p> <p>8 guidelines.</p> <p>9 Q. The "they" being the FMI panel of</p> <p>10 experts?</p> <p>11 A. This panel of experts.</p> <p>12 Q. Did Ms. Marmer or did you learn in the</p> <p>13 course of your investigation, when you say that they</p> <p>14 were reviewing the UEP guidelines, did she tell you</p> <p>15 whether the panel of experts made any suggestions to</p> <p>16 UEP for changes to the guidelines?</p> <p>17 A. We did not specifically talk about that.</p> <p>18 Q. You didn't ask Ms. Marmer if that ever</p> <p>19 happened?</p> <p>20 A. I can't remember in the course of our</p> <p>21 conversation if we -- we talked about this advisory</p> <p>22 board or group and a bit about their role. But as</p> <p>23 far as any specific recommendations that they made</p> <p>24 or discussions they had with the suppliers, that</p> <p>25 never came up in the course of our conversations.</p>	<p style="text-align: right;">148</p> <p>1 included in there and when.</p> <p>2 MS. LEVIN: Right.</p> <p>3 MR. MURRAY: That's what --</p> <p>4 BY MS. LEVIN:</p> <p>5 Q. Let me ask you this, Mr. Pruet: What</p> <p>6 do you know about the bid process for shell eggs and</p> <p>7 egg products?</p> <p>8 A. In very general terms, I know</p> <p>9 occasionally we will go to our suppliers and say --</p> <p>10 or -- you know, give us your most competitive</p> <p>11 pricing for the eggs that you're going to supply</p> <p>12 Kroger that will go into the various divisions.</p> <p>13 Q. And do you do that by what I call an RFP</p> <p>14 or request for proposals?</p> <p>15 A. It's GNX, RFP.</p> <p>16 Q. And when you issue an RFP, do you</p> <p>17 include in the RFP the factors or the criteria that</p> <p>18 a supplier needs to meet in order to win a bid?</p> <p>19 A. The only ones I can speak to will be</p> <p>20 quality. Food safety and quality requirements.</p> <p>21 Q. And why do you include those</p> <p>22 requirements in an RFP?</p> <p>23 A. Because we want to make sure that our</p> <p>24 suppliers are providing us with the safest, most</p> <p>25 wholesome product they can.</p>
<p style="text-align: right;">147</p> <p>1 Q. Can I ask a point of clarification. In</p> <p>2 terms of the topics that you are designated to</p> <p>3 discuss, is one of them the economic impact of</p> <p>4 animal welfare guidelines? Is that something that</p> <p>5 you've prepared to discuss today?</p> <p>6 A. Not the economic impact.</p> <p>7 MR. MURRAY: What topic number is that?</p> <p>8 MS. LEVIN: Well, I think it could be</p> <p>9 subsumed with Topic 16, Kroger's inclusion of animal</p> <p>10 welfare requirements and its requests for bids,</p> <p>11 contacts or other communications with egg or egg</p> <p>12 product suppliers. That's one of the topics you've</p> <p>13 designated Mr. Pruet for. And my understanding,</p> <p>14 based on his earlier testimony today, is that</p> <p>15 whether you think it's included by that or not, he</p> <p>16 doesn't have an understanding of that particular</p> <p>17 issue based on his interviews.</p> <p>18 MR. MURRAY: He knows whether they were</p> <p>19 included, the animal welfare guidelines. That's</p> <p>20 what he's prepared on.</p> <p>21 THE WITNESS: But when you're talking</p> <p>22 about economic impact, the bid process, I just</p> <p>23 generally know about the bid process. I'm not an</p> <p>24 expert on cost analysis or cost impact.</p> <p>25 MR. MURRAY: He knows that it's been</p>	<p style="text-align: right;">149</p> <p>1 Q. And is it your understanding that the</p> <p>2 requirements that are included in an RFP might</p> <p>3 affect the price that a producer bids?</p> <p>4 A. Yes.</p> <p>5 Q. So if there is an inclusion in the RFP</p> <p>6 for animal welfare certification, that's because</p> <p>7 that's a factor that might affect the price that a</p> <p>8 supplier bids; is that correct?</p> <p>9 MR. MURRAY: Objection to the form of</p> <p>10 the question, calls for speculation.</p> <p>11 THE WITNESS: I can tell you that I</p> <p>12 don't specifically get involved in pricing or cost</p> <p>13 analysis for any of our products. I just provide</p> <p>14 the standards to our procurement team, and they work</p> <p>15 directly with the suppliers to determine a fair</p> <p>16 price.</p> <p>17 BY MS. LEVIN:</p> <p>18 Q. But the standards that you provide are</p> <p>19 standards which presumably would affect a bid;</p> <p>20 correct?</p> <p>21 A. Yes, but I can't speak specifically to</p> <p>22 the cost impact of those requirements.</p> <p>23 Q. Well, without regard to quantification</p> <p>24 of the cost impact, can you speak to whether there</p> <p>25 is a cost impact from the animal welfare guidelines?</p>

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<p style="text-align: right;">150</p> <p>1 MR. MURRAY: Objection; overly broad, 2 calls for speculation. 3 THE WITNESS: I can only tell you in 4 general terms, many times -- and it's not just 5 animal welfare requirements; it's if we ever go to a 6 chain -- when we ask suppliers to implement a 7 program -- and it could be animal welfare; it could 8 be a new quality or food safety requirement -- the 9 general response is that it's going to cost us more. 10 This is what I get through sourcing. I 11 don't talk directly to our suppliers about cost 12 concerns. But they come back and they say, This is 13 going to require more effort; this is going to 14 require more cost from our standpoint. 15 We have our own manufacturing 16 operations. We feel the same impact when we have to 17 take on new requirements. 18 But I will tell you that's the knee-jerk 19 response. And over time, that a lot of the things 20 that we require our suppliers -- or request our 21 suppliers to do when it comes to these additional 22 requirements are absorbed. They come back. And 23 over time, because either there's an improvement in 24 efficiency or improvement in how they conduct their 25 processes, they -- they absorb the costs many times.</p>	<p style="text-align: right;">152</p> <p>1 practices. 2 But that's what I gleaned from my 3 investigation relative to any cost impacts. 4 Q. So what you gleaned from your 5 investigation was simply what was in the Complaint? 6 A. Yes. 7 Q. You didn't do any work to verify whether 8 that was correct or not? 9 A. I did not do that independently. 10 Q. And in the course of your investigation, 11 you didn't speak with anybody about those issues? 12 MR. MURRAY: Objection. It's not even 13 covered by this topic. I dispute the fact that 14 that's in Topic 16, that that's subsumed. 15 You can answer. 16 THE WITNESS: I did not have any 17 specific discussions about the impact of cost. 18 MS. LEVIN: Let's mark as Exhibit 15 a 19 document bearing Bates No. KRGEED0001562 through 20 1569. 21 (Kroger Exhibit 15 was marked for 22 identification.) 23 THE WITNESS: I'm familiar with this 24 document. 25 BY MS. LEVIN:</p>
<p style="text-align: right;">151</p> <p>1 And they actually recognize improvements. 2 That's been my general experience with 3 suppliers and new requirements, at least from my end 4 of the business. 5 BY MS. LEVIN: 6 Q. But you don't know whether any of that 7 occurred with respect to the animal welfare 8 guidelines? 9 A. I do not. 10 Q. And you didn't have any discussion with 11 Ms. Marmer or anyone else about whether Kroger was 12 aware that compliance with the animal welfare 13 guidelines would entail increased costs? 14 MR. MURRAY: Object to the form of the 15 question. 16 THE WITNESS: The only cost concerns 17 that I encountered in my investigation were based on 18 what I read in the Complaint. 19 BY MS. LEVIN: 20 Q. And what did you read in the Complaint? 21 A. That -- the Complaint indicated that 22 eggs -- that the egg producers were reducing their 23 egg supply and it was an artificially increasing 24 prices; and a lot of this was attributable to the 25 implementation of animal welfare guidelines and</p>	<p style="text-align: right;">153</p> <p>1 Q. Okay. What is Exhibit 15? 2 A. Well, the letter is addressed from 3 Carole Guerrette to Bob Krouse at Midwest Poultry 4 regarding Kroger's requirements for food safety and 5 quality, and that's the attachment to the note or 6 the letter to Bob. 7 Q. And I believe you said earlier 8 Ms. Guerrette reported to you. 9 A. Yes, she does. 10 Q. But you didn't work at Kroger in 11 May 2004. So this is not something that 12 Ms. Guerrette prepared at your instruction? 13 A. No. 14 Q. Does Kroger send out a letter similar to 15 Exhibit 15 to its egg suppliers today? 16 A. It would be a similar document. 17 Q. Let's take a look at Page 4 of the 18 document. It's the fifth page of the document, but 19 there are numbers at the bottom of the page. 20 A. Yes. 21 Q. The bottom paragraph on that page -- 22 "animal welfare certification" -- can you read that 23 for us. 24 A. [Reading]: All egg plants supplying 25 Kroger are required to show proof that they are a</p>

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<p style="text-align: right;">154</p> <p>1 "Certified Company" under the UEP guidelines for the 2 animal husbandry guidelines for US egg-laying 3 flocks. A copy must be included with your return 4 information. 5 Q. And was that, in fact, a requirement of 6 Kroger in May of 2004? 7 A. If it's in this document, yes. 8 Q. Does it remain a requirement of Kroger 9 today? 10 A. Yes. 11 Q. And that includes egg plants supplying 12 Kroger under a different banner? For example, King 13 Soopers? 14 A. Yes, our other divisions. Correct. 15 MS. LEVIN: Let's mark as Exhibit 16 a 16 document bearing Bates No. KRGE00018733 through 17 18738. 18 (Kroger Exhibit 16 was marked for 19 identification.) 20 THE WITNESS: Before we have any 21 questions regarding this document, I really have to 22 go to the restroom. 23 MR. MURRAY: You had several glasses of 24 water at lunch. 25 THE WITNESS: I know. I really do need</p>	<p style="text-align: right;">156</p> <p>1 banners. Foods Co is. I can't tell you if 2 Cala/Bell is today. 3 Q. But in 2003 -- 4 A. Yes. 5 Q. -- apparently it was. 6 A. Apparently it was. 7 Q. And can you explain what a banner store, 8 is, just so we're all on the same page. 9 A. A banner store is a Kroger-owned grocery 10 store that may have the Kroger name or another name 11 through acquisition. 12 Q. So it may operate under some name other 13 than Kroger? 14 A. Correct. 15 Q. At least to the consumers' eye. 16 Does Exhibit 16 resemble the requests 17 for proposal that are utilized today by Kroger? 18 A. I do not recognize the form of a bid as 19 such today at Kroger. 20 Q. Let's turn to the third page of 21 Exhibit 16. And you'll see Paragraph 13 [reading]: 22 Animal welfare Certification: Supplier must show 23 proof they are a "Certified Company" under 24 UEP guidelines for the "Animal Husbandry Guidelines 25 for U.S. Egg-Laying Flocks."</p>
<p style="text-align: right;">155</p> <p>1 to go. 2 THE VIDEOGRAPHER: We are going off the 3 record. The time on video is 14:05. 4 (Recess taken, during which 5 Ms. Osborn departed the deposition 6 proceedings.) 7 THE VIDEOGRAPHER: We are going back on 8 the record. The time on video is 14:11. 9 BY MS. LEVIN: 10 Q. So we are back on Exhibit 16. Have you 11 had a chance to review Exhibit 16? 12 A. I have. 13 Q. What is Exhibit 16? 14 A. It's a request for proposal from Kroger. 15 And it's going to -- it's regarding eggs. Ralphs, 16 Cala/Bell, Foods Co and Food 4 Less. 17 Q. And it's dated December 1, 2003; is that 18 correct? 19 A. Correct. 20 Q. Which was prior to your employment by 21 Kroger? 22 A. Yes. 23 Q. Are Ralphs, Cala/Bell, Foods Co and Food 24 4 Less all banners of the Kroger Company? 25 A. Food 4 Less and Ralphs are major</p>	<p style="text-align: right;">157</p> <p>1 Do you see that sentence? 2 A. Yes, No. 13. 3 Q. And that is a requirement for any 4 company that hopes to win the bid under Exhibit 16? 5 A. Yes. 6 Q. And is that same requirement included in 7 Kroger's RFPs today for shell eggs? 8 A. It should be. 9 Q. And is it included in Kroger's RFPs for 10 egg products today? 11 A. It should be. 12 Q. And has it been included in RFPs for 13 both shell eggs and egg products, at least from 14 December 1, 2003, to the present? 15 A. To the best of my knowledge. 16 MS. LEVIN: Let's mark as Exhibit 17 a 17 document entitled "Direct Action (Non-Class) 18 Plaintiff The Kroger Company's Supplemental 19 Responses to Defendant's First Set of 20 Interrogatories." 21 (Kroger Exhibit 17 was marked for 22 identification.) 23 BY MS. LEVIN: 24 Q. And I'm not going to ask you a lot of 25 detailed questions about this. I really have some</p>

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<p style="text-align: right;">158</p> <p>1 general questions about Exhibit A.</p> <p>2 A. Which page are you referring to?</p> <p>3 Q. It's after Page 9.</p> <p>4 A. Okay.</p> <p>5 Q. Did you play any role in the development</p> <p>6 of Exhibit A to Exhibit 17?</p> <p>7 A. I had no direct involvement in</p> <p>8 development of this exhibit.</p> <p>9 Q. Does this appear to be a list of</p> <p>10 Kroger's suppliers of various shell eggs from 2005</p> <p>11 to 2013?</p> <p>12 MR. MURRAY: 2004 dates in here, I see.</p> <p>13 MS. LEVIN: Maybe from 2004 to 2013.</p> <p>14 THE WITNESS: I recognize many of the</p> <p>15 suppliers, but I can't tell you if they are</p> <p>16 definitely suppliers today.</p> <p>17 I don't know all of our suppliers of</p> <p>18 eggs and egg products.</p> <p>19 BY MS. LEVIN:</p> <p>20 Q. Yeah. I don't expect you to verify that</p> <p>21 this is an accurate list. We'll do that with</p> <p>22 Mr. Klump, who apparently was the one who prepared</p> <p>23 the chart. But I'd just like, as a foundation,</p> <p>24 whether this appears to be a list of a large number</p> <p>25 of suppliers of shell eggs to Kroger over the years.</p>	<p style="text-align: right;">160</p> <p>1 Q. Do you know whether the agreement,</p> <p>2 whatever it may have been, with Mahard Egg Farm</p> <p>3 included a requirement that Mahard Egg Farm supplied</p> <p>4 eggs that were produced in compliance with the UEP</p> <p>5 guidelines?</p> <p>6 A. I can't speak to the specific supplier</p> <p>7 as to why it didn't meet contractual requirements.</p> <p>8 You'll have to ask our sourcing or procurement</p> <p>9 person. Yeah.</p> <p>10 Q. Well, I'm not suggesting that they</p> <p>11 didn't meet your requirements. I'm just asking</p> <p>12 whether, because you have been designated as the</p> <p>13 witness for -- from 1999 to the present, Kroger's</p> <p>14 inclusion of animal welfare requirements, including</p> <p>15 but not limited to UEP certified program</p> <p>16 requirements in its request for bids, contracts or</p> <p>17 other communications with egg or egg product</p> <p>18 suppliers. That's Topic 16.</p> <p>19 So, again, my question is whether --</p> <p>20 whatever sort of agreement you had, executed or</p> <p>21 nonexecuted contract, whether your agreement with</p> <p>22 Mahard Egg Farm required that the eggs supplied to</p> <p>23 Kroger be produced in accordance with the animal</p> <p>24 welfare guidelines of UEP.</p> <p>25 A. All suppliers of egg and egg products</p>
<p style="text-align: right;">159</p> <p>1 A. Yes.</p> <p>2 Q. You'll notice that, on the first five</p> <p>3 pages or six pages of Exhibit A to Exhibit 17, in</p> <p>4 the next-to-last column from the right, it says</p> <p>5 "Executed Contract"?</p> <p>6 A. Which page?</p> <p>7 Q. All of the first five pages.</p> <p>8 A. Okay.</p> <p>9 Q. Do you see in that column "Executed</p> <p>10 Contract, Executed Contract," over and over again?</p> <p>11 A. Yes.</p> <p>12 Q. And then you get to Page 7, and the last</p> <p>13 four entries say "Non Executed Contract." In fact,</p> <p>14 all of the entries for Mahard Egg Farm say "Non</p> <p>15 Executed Contract."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know why there was not an</p> <p>19 executed contract with Mahard Egg Farm for the</p> <p>20 supply of shell eggs to Kroger?</p> <p>21 A. I do not.</p> <p>22 Q. Do you know whether there was an oral</p> <p>23 agreement with Mahard Egg Farms for the supply of</p> <p>24 shell eggs?</p> <p>25 A. I do not.</p>	<p style="text-align: right;">161</p> <p>1 were required to adhere to our animal welfare</p> <p>2 requirements.</p> <p>3 Q. Whether they have an executed contract</p> <p>4 with Kroger or a nonexecuted contract with Kroger?</p> <p>5 A. Yes. Again, I'm speaking from the</p> <p>6 perspective of the requirements in the food safety</p> <p>7 and quality document that I believe was Exhibit 15;</p> <p>8 and then you see the same requirement in the request</p> <p>9 for proposal.</p> <p>10 So they would have been asked to adhere</p> <p>11 to our animal welfare requirements.</p> <p>12 Q. They would have been required to adhere</p> <p>13 to the animal welfare requirements; correct?</p> <p>14 A. It was a requirement.</p> <p>15 MS. LEVIN: I'm trying to think of an</p> <p>16 efficient way to do this. I have several contracts,</p> <p>17 all of which were -- most of which were signed by</p> <p>18 Mr. Klump, all of which contain the same provision</p> <p>19 that was in the RFP. And I'm happy to mark them all</p> <p>20 and have Mr. Pruet confirm that that was indeed a</p> <p>21 requirement of that particular contract.</p> <p>22 MR. MURRAY: Sure. If you want -- I</p> <p>23 don't have any problem with doing that.</p> <p>24 MS. LEVIN: We can have a stipulation if</p> <p>25 you want. I just -- I don't know if you want to</p>

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<p style="text-align: right;">162</p> <p>1 take the time to go through them all or not.</p> <p>2 MR. MURRAY: Why don't you just</p> <p>3 introduce them all as exhibits. It will make the</p> <p>4 record clearer.</p> <p>5 MS. LEVIN: So I'm marking Exhibits 18,</p> <p>6 19, 20, 21, 22, 23, 24 and 25. And I will give them</p> <p>7 to the reporter to start marking, and then we can go</p> <p>8 through them.</p> <p>9 The only question I'm going to have for</p> <p>10 you, Mr. Pruett, is about a paragraph on the,</p> <p>11 generally, the fourth page of the document about the</p> <p>12 animal welfare certification.</p> <p>13 BY MS. LEVIN:</p> <p>14 Q. Feel free to start reviewing them,</p> <p>15 Mr. Pruett, as you receive them.</p> <p>16 (Exhibits Kroger-18 through</p> <p>17 Kroger-25 were marked for</p> <p>18 identification.)</p> <p>19 MS. LEVIN: I have handed to the court</p> <p>20 reporter a series of documents, and I'll read the</p> <p>21 Bates numbers into the record.</p> <p>22 Exhibit 18 is a document bearing Bates</p> <p>23 No. KRGE00019391 through 19394.</p> <p>24 Exhibit 19 is a document bearing Bates</p> <p>25 No. KRGE00013093 through 13096.</p>	<p style="text-align: right;">164</p> <p>1 that have not been 100 percent produced to these</p> <p>2 terms; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Why did Kroger include that provision in</p> <p>5 its contracts with its suppliers?</p> <p>6 A. Which provision?</p> <p>7 Q. Both of those provisions, the</p> <p>8 requirement that the producer be a certified</p> <p>9 producer and that all eggs be produced in accordance</p> <p>10 with the animal welfare guidelines.</p> <p>11 A. Because it's our animal welfare</p> <p>12 requirement.</p> <p>13 Q. Because Kroger believed that the</p> <p>14 guidelines were valid guidelines?</p> <p>15 MR. MURRAY: Object to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Because the industry</p> <p>18 experts who developed the guidelines thought they</p> <p>19 were valid guidelines.</p> <p>20 BY MS. LEVIN:</p> <p>21 Q. And Kroger relied upon those industry</p> <p>22 experts; is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. And Kroger believed that compliance with</p> <p>25 the UEP animal welfare guidelines, I believe you</p>
<p style="text-align: right;">163</p> <p>1 Exhibit 20 is a document bearing Bates</p> <p>2 Nos. CM00404144 through -- I'm sorry. It begins</p> <p>3 CM00404142 through 147.</p> <p>4 Exhibit 21 is KRGE00018820 through '23.</p> <p>5 Exhibit 22 is KRGE00019290 through</p> <p>6 '291.</p> <p>7 Exhibit 23 is KRGE00019244 through 248.</p> <p>8 Exhibit 24 is KRGE00019185 through</p> <p>9 19199.</p> <p>10 And Exhibit 25 is KRGE00019143 through</p> <p>11 '147.</p> <p>12 THE WITNESS: I've reviewed the animal</p> <p>13 welfare certification requirement in each of these</p> <p>14 documents.</p> <p>15 BY MS. LEVIN:</p> <p>16 Q. And each of these documents, for</p> <p>17 whatever time period it may cover and whatever</p> <p>18 producer it may relate to, requires the producer to</p> <p>19 show proof that it's a certified company under the</p> <p>20 UEP guidelines for the animal welfare husbandry</p> <p>21 guidelines for US egg-laying flocks; is that</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. And each contract also states that</p> <p>25 Kroger will not accept any eggs from the producer</p>	<p style="text-align: right;">165</p> <p>1 said, was the right thing to do?</p> <p>2 A. I did say that.</p> <p>3 Q. And Kroger believes today that</p> <p>4 compliance with the animal welfare guidelines is the</p> <p>5 right thing to do?</p> <p>6 MR. MURRAY: Object to the form of the</p> <p>7 question.</p> <p>8 THE WITNESS: Specifically what</p> <p>9 requirements are you talking about?</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. The requirements of the animal, the UEP</p> <p>12 animal welfare guidelines.</p> <p>13 A. We agreed that our suppliers need to</p> <p>14 comply to the UEP guidelines as stated today.</p> <p>15 Q. What does Kroger do if a supplier fails</p> <p>16 an audit with respect to the animal welfare</p> <p>17 guidelines?</p> <p>18 A. Well, we would disqualify them.</p> <p>19 Q. What do you mean --</p> <p>20 A. They would not be allowed to supply</p> <p>21 Kroger any longer, because it's one of our</p> <p>22 requirements to do business.</p> <p>23 Q. Is that supplier given some time to</p> <p>24 bring its flocks into compliance?</p> <p>25 A. I would have to say it depends on how</p>

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<p style="text-align: right;">166</p> <p>1 severe the noncompliance is.</p> <p>2 Q. Did you discuss this issue with</p> <p>3 Mr. Kolenski?</p> <p>4 A. We did not; because the best of my</p> <p>5 knowledge, we have not encountered a supplier that's</p> <p>6 been noncompliant.</p> <p>7 Q. Has Kroger considered any alternatives</p> <p>8 to the UEP animal welfare program?</p> <p>9 A. Not since I've been with the company.</p> <p>10 Q. Did you learn from any of your</p> <p>11 interviews that Kroger ever considered any</p> <p>12 alternatives to the animal welfare program?</p> <p>13 A. No.</p> <p>14 Q. Did Kroger ever consider the Sparboe</p> <p>15 Farms process verified program?</p> <p>16 A. Not since I've been with the company.</p> <p>17 Q. Have you ever heard of the Sparboe Farms</p> <p>18 process verified program?</p> <p>19 A. I've only heard of Sparboe Farms, but</p> <p>20 not that program.</p> <p>21 Q. Have you heard of any other competing</p> <p>22 animal welfare programs?</p> <p>23 A. I can't remember any.</p> <p>24 Q. Have you ever heard of the animal humane</p> <p>25 certified program?</p>	<p style="text-align: right;">168</p> <p>1 Q. What did you learn from Mr. Kolenski?</p> <p>2 A. That the cage-free requirements were</p> <p>3 included in the UEP guidelines as well.</p> <p>4 Q. There were separate guidelines for</p> <p>5 cage-free?</p> <p>6 A. Right. That's how the document is</p> <p>7 organized.</p> <p>8 Q. Do you know when those guidelines were</p> <p>9 included within the UEP guidelines?</p> <p>10 A. I have two documents, 2008 and a 2010</p> <p>11 reviewed. Those two documents, UEP documents, have</p> <p>12 separate guidelines.</p> <p>13 Q. So as best you understand it from your</p> <p>14 investigation, there was a program developed for</p> <p>15 cage-free -- eggs produced from cage-free hens</p> <p>16 sometime around 2008?</p> <p>17 A. I can only tell you that I reviewed the</p> <p>18 guidelines only back to 2008. So I don't know if</p> <p>19 guidelines existed prior to 2008.</p> <p>20 Q. But as of 2008, you saw some guidelines</p> <p>21 pertaining to cage-free hens; correct?</p> <p>22 A. Correct.</p> <p>23 Q. But the animal welfare guidelines that</p> <p>24 you require your producers to comply with are not</p> <p>25 cage-free guidelines, are they?</p>
<p style="text-align: right;">167</p> <p>1 A. Animal humane certified program?</p> <p>2 It sounds familiar, to be honest.</p> <p>3 Q. I can show you something that might</p> <p>4 prompt your recollection.</p> <p>5 MS. LEVIN: Let's mark as Exhibit 26 a</p> <p>6 document bearing Bates No. KRGE00017271 through</p> <p>7 17287.</p> <p>8 (Kroger Exhibit 26 was marked for</p> <p>9 identification.)</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. And I don't intend to question you in</p> <p>12 detail. I just wanted you to take a look at this</p> <p>13 document and see if it refreshed your recollection</p> <p>14 from any of your investigation about the animal</p> <p>15 humane certified program.</p> <p>16 A. I don't remember reviewing this</p> <p>17 document.</p> <p>18 Q. And it doesn't prod any memories about</p> <p>19 any alternatives to the animal welfare program by</p> <p>20 UEP?</p> <p>21 A. It does not.</p> <p>22 Q. Did you discuss with anyone during the</p> <p>23 course of your investigation, cage-free eggs?</p> <p>24 A. Yes. General discussions with John</p> <p>25 Kolenski.</p>	<p style="text-align: right;">169</p> <p>1 A. It doesn't state that we're specifically</p> <p>2 calling those out. It's just saying under the UEP</p> <p>3 guidelines, for the -- and I'm reading from Moark's</p> <p>4 document.</p> <p>5 Q. Hold on. You're reading from Exhibit --</p> <p>6 A. I'm reading from Exhibit 24, which, as I</p> <p>7 understand, is the same statement we have for all of</p> <p>8 our suppliers.</p> <p>9 Q. Right. Was your understanding that as</p> <p>10 of February 4, 2007, the animal welfare guidelines</p> <p>11 that you were -- that Kroger was requiring Moark to</p> <p>12 comply with were cage-free guidelines?</p> <p>13 A. I don't know in 2004 if they had</p> <p>14 specific guidelines for cage-free. I only know from</p> <p>15 2008 forward that there are cage-free guidelines in</p> <p>16 the UEP animal welfare requirements.</p> <p>17 Q. Okay. Well, is it your understanding</p> <p>18 that since 2008, Kroger has required all of its</p> <p>19 shell egg suppliers to provide only eggs produced by</p> <p>20 cage-free hens?</p> <p>21 A. No.</p> <p>22 Q. No?</p> <p>23 A. We have -- the requirements as stated,</p> <p>24 from 2008 going forward, apply to what the producer</p> <p>25 is supplying.</p>

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<p style="text-align: right;">170</p> <p>1 Q. Right.</p> <p>2 A. So if it's cage-free, they have to</p> <p>3 adhere to the cage-free requirements, cage</p> <p>4 requirements.</p> <p>5 So what's ever applicable to their</p> <p>6 business and it's outlined in the UEP requirements</p> <p>7 is what they need to adhere to.</p> <p>8 Q. Right. So if the company is bidding to</p> <p>9 supply cage-free -- eggs produced by cage-free hens,</p> <p>10 they have to comply with the UEP guidelines</p> <p>11 pertaining to cage-free hens. And if they're</p> <p>12 producing other eggs or providing you with other</p> <p>13 eggs, they comply with guidelines that pertain to</p> <p>14 cage-space requirements?</p> <p>15 A. What's ever applicable to their</p> <p>16 business.</p> <p>17 Q. Right.</p> <p>18 Do you know whether cage-free eggs are</p> <p>19 more expensive for Kroger to purchase than eggs from</p> <p>20 caged hens?</p> <p>21 A. I could only generally say they're more</p> <p>22 expensive, but I can't tell you a specific price.</p> <p>23 Q. I don't expect you to tell us a specific</p> <p>24 price.</p> <p>25 What's your understanding as to why</p>	<p style="text-align: right;">172</p> <p>1 built into the profit margin.</p> <p>2 Q. So you don't know whether Kroger pays</p> <p>3 more for those eggs or not?</p> <p>4 A. I don't know specifically what they pay</p> <p>5 for those eggs and if it's always more than the</p> <p>6 conventionally raised eggs.</p> <p>7 Q. But Kroger charges more for the eggs to</p> <p>8 its customers?</p> <p>9 A. In general.</p> <p>10 Q. Do you know how it is that Kroger is</p> <p>11 able to obtain a higher price for those eggs from</p> <p>12 consumers -- for the cage-free eggs?</p> <p>13 MR. MURRAY: Object to the form of the</p> <p>14 question, calls for speculation.</p> <p>15 THE WITNESS: I don't know those -- I</p> <p>16 don't understand that analysis or I'm not privy to</p> <p>17 that analysis.</p> <p>18 BY MS. LEVIN:</p> <p>19 Q. But Kroger is able to do that; correct?</p> <p>20 A. They are able to get a higher price from</p> <p>21 our customers for those eggs.</p> <p>22 Q. Do you know why or do you know when</p> <p>23 Kroger began to sell eggs produced from cage-free</p> <p>24 hens?</p> <p>25 A. No.</p>
<p style="text-align: right;">171</p> <p>1 those eggs are more expensive?</p> <p>2 A. They're part of our specialty egg</p> <p>3 program; like organic and natural, those are</p> <p>4 more-expensive eggs.</p> <p>5 Q. And do you know why those eggs are more</p> <p>6 expensive?</p> <p>7 A. Well, it's because they're premium eggs.</p> <p>8 They're part of a premium egg program. I can't</p> <p>9 specifically tell you all the factors that go into</p> <p>10 the pricing of those eggs.</p> <p>11 Q. Is it because the hens have more space,</p> <p>12 and so there are fewer hens?</p> <p>13 MR. MURRAY: Object to the form of the</p> <p>14 question; calls for speculation.</p> <p>15 THE WITNESS: It's not my area of</p> <p>16 expertise. A poultry scientist or veterinarian will</p> <p>17 have to tell you that.</p> <p>18 BY MS. LEVIN:</p> <p>19 Q. You just know that Kroger does pay</p> <p>20 something more for eggs produced in accordance with</p> <p>21 the cage-free guidelines than it pays for eggs</p> <p>22 produced in accordance with the caged-space</p> <p>23 guidelines?</p> <p>24 A. What I know is they cost more at the</p> <p>25 stores for our customers, but I don't know what's</p>	<p style="text-align: right;">173</p> <p>1 Q. Do you know why Kroger began to sell</p> <p>2 eggs produced from cage-free hens?</p> <p>3 A. Because it's what -- it was a type of</p> <p>4 egg our customers wanted.</p> <p>5 Q. And Kroger is responsive to customer</p> <p>6 demand; correct?</p> <p>7 A. Depending on the topic.</p> <p>8 Q. Well, with respect to the supply of</p> <p>9 cage-free eggs, Kroger was responding to consumer</p> <p>10 demand?</p> <p>11 A. I will say in general, we try to supply</p> <p>12 our customers the products they want. I can't</p> <p>13 specifically tell you about the analysis that went</p> <p>14 into determining, you know, when or what factors</p> <p>15 were involved in offering cage-free eggs to our</p> <p>16 customers. That's a merchandising and sourcing</p> <p>17 concern.</p> <p>18 Q. Do you know whether PETA was pressuring</p> <p>19 Kroger to begin to supply cage-free eggs?</p> <p>20 A. I know that in some of their letters,</p> <p>21 they were indicating that they wanted that option</p> <p>22 for our customers.</p> <p>23 Q. So some of their letters to Kroger?</p> <p>24 MR. MURRAY: You got to say yes or no.</p> <p>25 THE WITNESS: Yes.</p>

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<p style="text-align: right;">174</p> <p>1 MS. LEVIN: Let's mark as Exhibit 27 a 2 document bearing Bates No. KRGEED00010809 through 3 10810. 4 (Kroger Exhibit 27 was marked for 5 identification.) 6 THE WITNESS: I've reviewed Exhibit 27. 7 BY MS. LEVIN: 8 Q. What is Exhibit 27? 9 A. It's a note -- email from Matt Prescott, 10 who is with PETA, to Lynn Marmer and copying Dave 11 Dillon. 12 Q. And it's dated February 11, 2008; is 13 that correct? 14 A. Yes. 15 Q. And there is an attachment to 16 Mr. Prescott's email; is that correct? 17 A. Yes. 18 Q. And what is the subject of the 19 attachment? 20 A. It's pretty much communicating to Lynn 21 Marmer what Safeway is doing around some animal 22 welfare initiatives. 23 Q. What was Safeway doing, according to the 24 attachment to Exhibit 27 with respect to cage-free 25 eggs?</p>	<p style="text-align: right;">176</p> <p>1 Q. And how did Kroger respond to the 2 pressure from PETA on the subject of cage-free eggs? 3 A. I do know that we made some 4 announcements of press releases saying that we were 5 trying to increase the percentage of cage-free eggs 6 in our stores. 7 Q. And when you say "trying to," what was 8 the issue with respect to increasing the percentage 9 of cage-free eggs sold in your store? 10 A. I can't tell you the limitations other 11 than supply, available supply. You'd have to speak 12 to somebody from procurement to talk about what the 13 limitations were. 14 Q. So you don't know whether there was a 15 difficulty with getting a supply of cage-free eggs? 16 A. All I understand is that there was 17 probably some limits around the supply; but I can't 18 tell you specifically what those limitations were. 19 Q. But generally there were some 20 limitations with respect to obtaining cage-free eggs 21 for sale at Kroger stores? 22 A. That's what I remember in 23 conversations -- and it's not necessarily specific 24 to conversations I've had with Lynn Marmer. It's 25 what I've heard around the organization and what's</p>
<p style="text-align: right;">175</p> <p>1 A. Well, the second -- the first sentence 2 of the second paragraph says, "Safeway will 3 implement a new policy that gives buying preference 4 to cage-free eggs." 5 Q. And Mr. Prescott in his email to 6 Ms. Marmer says, "I'd love to get the same letter 7 from Kroger." Is that correct? 8 A. That's what it says. 9 Q. Did you discuss PETA's efforts to 10 persuade Kroger to offer cage-free eggs, with 11 Ms. Marmer? 12 A. Not specifically. 13 Q. Did you discuss it generally? 14 A. It may have come up in general 15 discussions. 16 Q. What did Ms. Marmer tell you? 17 A. I can't remember specifically what she 18 said as far as, you know, the efforts to increase 19 cage-free. I just know cage-free came up in 20 conversations with her. 21 Q. And that PETA was pressuring Kroger to 22 sell cage-free eggs? 23 A. PETA was pressuring Kroger about a lot 24 of practices around animal welfare. Cage-free was 25 one of the things that came up.</p>	<p style="text-align: right;">177</p> <p>1 been indicated in press releases. 2 Q. So this is a topic you're familiar with 3 independent of any conversations you had with 4 Ms. Marmer? 5 A. Yeah; through press releases. It's a 6 topic. It's public. 7 Q. Does Kroger have an internal group today 8 that focuses on animal welfare issues? 9 A. Internal group? Define "internal 10 group." 11 Q. A group internal to Kroger, its own 12 group. 13 A. We have an animal welfare panel, and the 14 internal group is part of the animal welfare panel. 15 We have internal associates or associates that are 16 part of Kroger that are part of the panel. 17 Q. Did you have any involvement in 18 recruiting experts to serve on Kroger's animal 19 welfare panel? 20 A. I did. 21 Q. And whom did you recruit to serve on 22 that panel? 23 A. It's turned over. So I will tell you 24 who we started with and who we have today. 25 Q. Okay.</p>

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<p style="text-align: right;">178</p> <p>1 A. We had Dr. James Denton. 2 Q. And was Mr. Denton a specialist in 3 poultry -- 4 A. Poultry. 5 Q. -- egg-laying hens? 6 A. Yes. Poultry and eggs. 7 Q. Okay. 8 A. And we had -- I'm trying to remember. 9 She's rotated off the panel. 10 Q. Anne Butler-Johnson? Was that -- 11 A. Anna Butters-Johnson, Dr. Johnson, from 12 Iowa State. And then Ted McCollum from Texas A&M. 13 But Dr. Johnson is no longer on the panel. 14 Q. Is -- Dr. Johnson was a specialist in 15 pork welfare? 16 A. Correct. 17 Q. And who -- what was the third expert? 18 A. Beef. 19 Q. Beef. So Dr. Denton was the only one 20 that had any expertise in the area of poultry and 21 laying-hen welfare? 22 A. Correct. 23 Q. Has Dr. Denton been replaced? 24 A. He has been. 25 Q. Let's scroll back just a little bit.</p>	<p style="text-align: right;">180</p> <p>1 the FMI expert panel, did you? 2 A. We did not create our own program. 3 Q. I didn't say "program." I said "panel." 4 A. We -- sorry. 5 We brought this panel together to make 6 sure that our suppliers were adhering to the best 7 practices available to the industry. Because we are 8 not experts. 9 Q. Right. Was the one purpose of this -- 10 or one assignment for this animal welfare panel to 11 review the UEP animal welfare guidelines for 12 egg-laying hens? 13 A. That would have been one of their tasks, 14 among the other animal welfare programs. 15 (Kroger Exhibit 28 was marked for 16 identification.) 17 BY MS. LEVIN: 18 Q. Let's just mark quickly as Exhibit 28 a 19 document bearing Bates No. KRGEDED00010849. 20 A. Yes. I reviewed Exhibit 28. 21 Q. And what is Exhibit 28? 22 A. It is an email from me to Lynn Marmer, 23 copying Brendon Cull, about the animal welfare 24 panel. 25 Q. And you, in fact, sent this email on or</p>
<p style="text-align: right;">179</p> <p>1 Do you recall when Kroger first began to 2 recruit experts for an animal welfare panel? 3 A. 2008. 4 Q. Why did Kroger do that? 5 A. Because we wanted to have a third-party 6 view, academic experts to help guide us, the various 7 animal welfare issues that was facing the 8 organization. 9 Q. Had the FMI panel of experts disbanded 10 at this point? 11 A. I don't know. 12 Q. But Kroger was no longer relying upon 13 whatever panel FMI may have put together? 14 A. I will say we were still using the FMI 15 requirements -- 16 Q. Right. 17 A. -- in all the applicable areas of our 18 business where animal welfare was a concern. But we 19 engaged this panel, since we're not really experts 20 in animal welfare, to give us their expert view if 21 the guidelines we had in each of those areas were 22 still adequate and to make sure that we're raising 23 the bar on those standards, on those requirements. 24 Q. You didn't create your own animal 25 welfare program because of any lack of confidence in</p>	<p style="text-align: right;">181</p> <p>1 about April 24, 2008? 2 A. Correct. 3 Q. Had Ms. Marmer -- well, why were you 4 creating experts to serve on an animal welfare 5 panel? Is that something Ms. Marmer had asked you 6 to do? 7 A. Lynn and I discussed it, but I can't 8 remember if she asked me to do it or I was getting 9 feedback from our merchandising leadership in those 10 areas -- meat, pork, egg and poultry -- to bring 11 this panel together, because they have been in and 12 out of the panel meetings themselves, like our vice 13 president of meat merchandising. 14 Q. Right. So someone -- you're not sure 15 who -- asked you to put the panel together? 16 A. I put the panel together. We discussed 17 it as a team and decided that it would be a good 18 idea to have outside experts. 19 Q. Okay. Who was on the panel besides the 20 three experts that you identified? 21 A. Brendon Cull, we've had two or three 22 vice presidents of merchandising. The director -- 23 vice president of meat merchandising; the director 24 of meat merchandising; John Kolenski; myself. 25 Q. And how often has this panel met since</p>

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<p style="text-align: right;">182</p> <p>1 2008?</p> <p>2 A. At least once a year but no more than</p> <p>3 twice a year.</p> <p>4 Q. Let's mark as Exhibit 29 a document</p> <p>5 bearing Bates No. KRGE00017072.</p> <p>6 (Kroger Exhibit 29 was marked for</p> <p>7 identification.)</p> <p>8 (Pause.)</p> <p>9 THE WITNESS: I reviewed Exhibit 29.</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. What is Exhibit 29?</p> <p>12 A. It's a mission statement that I wrote</p> <p>13 with the team, communication methodology and the</p> <p>14 primary roles of the panel members for the Kroger</p> <p>15 animal welfare panel.</p> <p>16 Q. And one of the missions of the Kroger</p> <p>17 animal welfare panel was to provide expert,</p> <p>18 science-based knowledge and guidance to assist the</p> <p>19 nation's largest grocery retailer in developing</p> <p>20 policies, vendor standards and internal monitoring</p> <p>21 processes that will promote and advance the humane</p> <p>22 treatment of animals by the food industry; is that</p> <p>23 correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And the nation's largest grocery</p>	<p style="text-align: right;">184</p> <p>1 members to look into their areas of expertise.</p> <p>2 Q. What notes would you need to consult to</p> <p>3 verify what Dr. Denton did or did not do?</p> <p>4 A. It would have to be the meeting notes</p> <p>5 that were taken in 2008 and 2009 and 2010 when he</p> <p>6 was part of the panel.</p> <p>7 Q. Do you know whether those notes were</p> <p>8 produced in this litigation?</p> <p>9 A. I do not know.</p> <p>10 Q. But these are handwritten notes of</p> <p>11 yours?</p> <p>12 A. Handwritten notes and minutes -- typed</p> <p>13 minutes.</p> <p>14 Q. Typed minutes.</p> <p>15 A. It could be a combination, depending on</p> <p>16 the year.</p> <p>17 Q. But you didn't review those notes to</p> <p>18 prepare for your deposition today?</p> <p>19 A. I did not review those notes.</p> <p>20 Q. Even though one of the topics that</p> <p>21 you've been designated on is Topic 21 from 1999 to</p> <p>22 the present, any committees, working groups or other</p> <p>23 internal efforts by Kroger related to animal welfare</p> <p>24 or concerns about the treatment of animals?</p> <p>25 A. Yes. I did not review the notes.</p>
<p style="text-align: right;">183</p> <p>1 retailer is Kroger; is that correct?</p> <p>2 A. Traditional retailer; correct.</p> <p>3 Q. Well, it doesn't say "traditional" here,</p> <p>4 but I'll accept your amendment.</p> <p>5 And under Audit Review Process, it says</p> <p>6 [reading]: The panel will be asked to review</p> <p>7 Kroger's animal welfare standards and a sampling of</p> <p>8 supplier animal welfare audits. According to each</p> <p>9 member's area of expertise, the panel will provide</p> <p>10 guidance and feedback regarding the appropriateness</p> <p>11 and effectiveness of the audit criteria, auditing</p> <p>12 process and format and scoring process for</p> <p>13 compliance with animal treatment standards; is that</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And did the panel, in fact, review the</p> <p>17 UEP guidelines for egg-laying hens that were in</p> <p>18 existence in 2008?</p> <p>19 A. That should have been part of</p> <p>20 Dr. Denton's review.</p> <p>21 Q. Did Dr. Denton, in fact, conduct that</p> <p>22 review?</p> <p>23 A. Without consulting my notes, I can't</p> <p>24 tell you exactly what he did. But it would have</p> <p>25 been a general expectation of each of the panel</p>	<p style="text-align: right;">185</p> <p>1 Q. So are you prepared today to testify on</p> <p>2 Topic 21?</p> <p>3 A. Not without reviewing my notes.</p> <p>4 Q. Any reasons why you didn't review your</p> <p>5 notes in order to testify today?</p> <p>6 A. It's just something I didn't do.</p> <p>7 Q. And you're unable to provide us with any</p> <p>8 testimony without review of those notes?</p> <p>9 A. I cannot.</p> <p>10 Q. Do you have a recollection of whether</p> <p>11 Dr. Denton made any suggestions to you about</p> <p>12 amendments to the UEP animal welfare guidelines for</p> <p>13 egg-laying hens?</p> <p>14 A. Well, if he did, we didn't accept them,</p> <p>15 because we're still -- we still have the same</p> <p>16 requirement for our egg producers. We haven't</p> <p>17 modified them. We haven't added to them.</p> <p>18 Q. Why was it important to -- for the</p> <p>19 animal welfare panel to study audit procedures?</p> <p>20 A. We just want to make sure that they're</p> <p>21 measuring the right things against the guidelines</p> <p>22 for each of those industries.</p> <p>23 Q. So the idea was to make sure that</p> <p>24 whatever it was that the animal welfare audit</p> <p>25 included, it included everything that was in the</p>

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<p style="text-align: right;">186</p> <p>1 guidelines?</p> <p>2 A. Yes.</p> <p>3 MS. LEVIN: Let's mark as Exhibit 30 a</p> <p>4 document bearing Bates No. KRGEED00010794.</p> <p>5 (Kroger Exhibit 30 was marked for</p> <p>6 identification.)</p> <p>7 MS. CRABTREE: Did you say 1079?</p> <p>8 MS. LEVIN: And then a 4 -- 10794.</p> <p>9 MS. CRABTREE: Thank you.</p> <p>10 (Pause.)</p> <p>11 THE WITNESS: I've reviewed Exhibit 30.</p> <p>12 BY MS. LEVIN:</p> <p>13 Q. And what is Exhibit 30?</p> <p>14 A. It's an email from Brendon Cull to Lynn</p> <p>15 Marmer copying me and Mark Van Buskirk, who was the</p> <p>16 vice president of meat merchandising at the time.</p> <p>17 Q. And Mr. Cull references a meeting -- the</p> <p>18 date of Mr. Cull's email is October 6th, 2008;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And he references a first meeting of the</p> <p>22 animal welfare panel for November of 2006; is that</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. Do you have a recollection of that</p>	<p style="text-align: right;">188</p> <p>1 meeting was a review of the current FMI animal</p> <p>2 welfare program to determine if we need additional</p> <p>3 standards; is that correct?</p> <p>4 A. That's how I read it.</p> <p>5 Q. And did that take place at that first</p> <p>6 meeting of the animal welfare panel?</p> <p>7 A. I can't remember if we talked</p> <p>8 specifically about those standards.</p> <p>9 Q. Do you recall anything else that was</p> <p>10 discussed at the first meeting of the animal welfare</p> <p>11 panel in November of 2006?</p> <p>12 A. Not specific to egg layers or the</p> <p>13 egg-producing industry.</p> <p>14 Q. Do you recall anything in general about</p> <p>15 the egg-laying industry that was discussed at the</p> <p>16 first meeting?</p> <p>17 A. I don't. But I do recall quite a bit of</p> <p>18 discussion around controlled atmosphere stunning in</p> <p>19 regards to poultry.</p> <p>20 Q. And what is controlled-atmosphere</p> <p>21 stunning?</p> <p>22 A. It is for broilers, chicken broilers;</p> <p>23 one of the ways to render them unconscious before</p> <p>24 they're slaughtered by a reciprocating blade to</p> <p>25 their throat.</p>
<p style="text-align: right;">187</p> <p>1 meeting?</p> <p>2 A. Vague recollection. This was back in</p> <p>3 2008.</p> <p>4 Q. And what do you recall?</p> <p>5 A. I remember having a face-to-face meeting</p> <p>6 with the three panelists at that time, talking about</p> <p>7 what they were seeing as animal welfare challenges</p> <p>8 or opportunities in their industries.</p> <p>9 Q. And do you recall what they saw as</p> <p>10 challenges or opportunities with respect to</p> <p>11 egg-laying hens?</p> <p>12 A. I do not.</p> <p>13 Q. Was this a meeting where you would have</p> <p>14 taken notes?</p> <p>15 A. I would have taken notes.</p> <p>16 Q. Would you have taken notes at all of the</p> <p>17 animal welfare panel meetings that you attended?</p> <p>18 A. Yes.</p> <p>19 Q. And do you have those notes today?</p> <p>20 A. I do not.</p> <p>21 Q. I don't mean with you here today, but in</p> <p>22 your office, wherever that may be?</p> <p>23 A. Yes.</p> <p>24 Q. And one of the things that was going to</p> <p>25 take place, according to Mr. Cull, at this first</p>	<p style="text-align: right;">189</p> <p>1 Q. And, to your knowledge, at that point in</p> <p>2 time, was Kroger receiving poultry that had been</p> <p>3 subject to that procedure?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Was there some issue that needed to be</p> <p>6 discussed about that particular topic?</p> <p>7 A. It was the hottest topic at that time in</p> <p>8 regards to animal welfare. We had received</p> <p>9 shareholder proposals.</p> <p>10 Q. Pertaining to controlled-atmosphere</p> <p>11 stunning?</p> <p>12 A. Yes.</p> <p>13 Q. But, again, that's not an issue with</p> <p>14 respect to egg-laying hens; correct?</p> <p>15 A. It is not.</p> <p>16 Q. Let's mark as Exhibit -- I'll mark these</p> <p>17 together as Exhibits 30 and 31; documents bearing</p> <p>18 Bates No. KRGEED00017070 through '71; and as</p> <p>19 Exhibit 31, a document bearing Bates</p> <p>20 No. KRGEED00017241 through '42.</p> <p>21 (Discussion off the stenographic</p> <p>22 record.)</p> <p>23 MS. LEVIN: I'll make that 31 and 32.</p> <p>24 (Pause.)</p> <p>25 (Kroger Exhibit 31 and Exhibit</p>

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<p style="text-align: right;">190</p> <p>1 Kroger-32 were marked for 2 identification.) 3 THE WITNESS: I've reviewed the 4 documents, 31 and 32. 5 BY MS. LEVIN: 6 Q. What is Exhibit 31? 7 A. 31 is the agenda for the 8 December 16th, 2008 meeting. 9 Q. And what is Exhibit 32? 10 A. The minutes from that meeting. 11 Q. And this is the meeting of the Kroger 12 panel animal welfare meeting? 13 A. Yes. 14 Q. Is that your handwriting that appears on 15 Exhibit 31? 16 A. It is. 17 Q. So these would be your notes from the 18 December 16, 2008 Kroger animal welfare meeting? 19 A. Yes. Those are my handwritten notes. 20 Q. Does review of this document, 21 Exhibit 31, refresh your recollection at all about 22 what occurred at the December 16, 2008 animal 23 welfare meeting? 24 A. It does. 25 Q. What does it bring back to mind?</p>	<p style="text-align: right;">192</p> <p>1 were effective. Therefore, you know, our -- the 2 suppliers, when it comes to animal welfare 3 requirements, adhering to those requirements. 4 Q. Take a look at the backside of the 5 second page of Kroger Exhibit 31. What is Page 2 of 6 that exhibit? 7 A. It's an email from Lynn Marmer to me, 8 Mark Van Buskirk, copying John Kolenski. 9 Q. And you'll see one of the things that 10 Ms. Marmer says in the first sentence is that Kroger 11 has been a leader in pushing the retail industry to 12 develop standards for species and working 13 collaboratively with trade associate groups like 14 AMI. 15 Do you see that? 16 A. Yes. 17 Q. And that was a view that Ms. Marmer 18 expressed to you during your interview with her; 19 correct? 20 A. Yeah; that we have been an industry 21 leader. 22 Q. In the development of animal welfare 23 guidelines; correct? 24 MR. MURRAY: Object to the form of the 25 question.</p>
<p style="text-align: right;">191</p> <p>1 A. It brings back -- I believe this was our 2 inaugural meeting. This is the first time we had 3 brought the members together. 4 So we talked about -- we made 5 introductions, talked about the mission of the 6 panel. And then each of the experts, as it's 7 indicated here, had 20 minutes to talk about what 8 was going on in their areas of expertise; review of 9 the audits and whether -- you know, are they 10 adequate or not to stand up to the guidelines or to 11 evaluate against a processor against those 12 guidelines. 13 Future Perspective on animal welfare, 14 Upcoming Meetings, Next Steps. 15 Q. Your handwriting right next to the 16 "Kroger's Future Perspective on animal welfare," 17 what does that say? 18 A. "How to structure a process that ensures 19 that our 'standards' are keeping up." 20 Q. What does that mean, "our standards are 21 keeping up"? 22 A. Well, at that time -- I'm not certain 23 exactly what I meant. But I know we were talking 24 about audits, so we wanted to make sure that the 25 audits that were being conducted against guidelines</p>	<p style="text-align: right;">193</p> <p>1 THE WITNESS: Well, I would say it's to 2 make sure that we have the right standards in place, 3 according to the experts. 4 BY MS. LEVIN: 5 Q. Right. But Kroger has been a leader in 6 attempting to ensure that animal welfare guidelines 7 were developed for egg-laying hens, amongst other 8 animals? 9 MR. MURRAY: Objection to the form of 10 the question. 11 THE WITNESS: All I can interpret this 12 is that it's a general statement about standards for 13 the entire industry, not just egg layers. AMI is 14 American Meat Institute. 15 BY MS. LEVIN: 16 Q. Well, I understand it's for species 17 beyond hens. But one of the species that Ms. Marmer 18 is referring to there is egg-laying hens; correct? 19 MR. MURRAY: Objection to the form of 20 the question. 21 THE WITNESS: That would be speculation 22 on my part. 23 BY MS. LEVIN: 24 Q. Well, you received this memo; correct? 25 A. I did.</p>

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<p style="text-align: right;">194</p> <p>1 Q. And what did you speculate Ms. Marmer 2 meant when you received it?</p> <p>3 A. That she was talking about the industry 4 in general, and she made specific reference to the 5 American Meat Institute. So she's talking about all 6 industries where animal welfare is a concern.</p> <p>7 Q. Including egg-laying hens; correct?</p> <p>8 A. I don't read that in there, but . . .</p> <p>9 Q. Well, isn't that one of the "all 10 industries where animal welfare standards are a 11 concern"?</p> <p>12 A. It is one of the industries.</p> <p>13 Q. So when you say that she was concerned 14 about all industries in which animal welfare 15 guidelines are of a concern, you understood her to 16 also be talking about egg-laying hens, didn't you?</p> <p>17 A. I could only assume that she was 18 including them.</p> <p>19 Q. That's how you understood it; correct?</p> <p>20 A. Yes. At the time we had three 21 industries represented, so we were talking about all 22 of those industries.</p> <p>23 Q. So it was Ms. Marmer's view that Kroger 24 has been a leader in pushing the retail industry's 25 developed standards for egg-laying hens amongst</p>	<p style="text-align: right;">196</p> <p>1 again, the company --</p> <p>2 BY MS. LEVIN:</p> <p>3 Q. And Kroger was a leader in pushing for 4 that to happen; correct?</p> <p>5 MR. MURRAY: He wasn't done with his 6 answer. He got cut off.</p> <p>7 THE WITNESS: Again, when she says 8 "develop," I don't know if she literally means that 9 the retailers are developing the standards. They 10 don't have the expertise to develop the standards. 11 BY MS. LEVIN:</p> <p>12 Q. I'm not asking if the -- if the -- if 13 Kroger was developing standards.</p> <p>14 What Ms. Marmer wrote is, "Kroger has 15 been a leader in pushing the retail industry to 16 develop standards"; correct?</p> <p>17 A. That's what she says in the note to me.</p> <p>18 Q. And one of the species that she was 19 referencing were egg-laying hens; correct?</p> <p>20 MR. MURRAY: Objection; asked and 21 answered.</p> <p>22 THE WITNESS: I don't have anything else 23 to say about that, because she's not specifically 24 talking about egg layers in that sentence. 25 BY MS. LEVIN:</p>
<p style="text-align: right;">195</p> <p>1 other animals; correct?</p> <p>2 A. Well, again, how she uses "develop," 3 this -- I don't know if she is saying "develop" in 4 terms of creating -- I don't know the context she's 5 using "develop."</p> <p>6 Q. Mr. Pruet, you received this email in 7 December of 2008; correct?</p> <p>8 A. Correct.</p> <p>9 Q. You were involved with developing an 10 animal welfare panel that included as part of its 11 mission review of the animal welfare guidelines for 12 egg-laying hens; correct?</p> <p>13 A. They would have -- that would have been 14 part of their work.</p> <p>15 Q. Do you have any doubt that when 16 Ms. Marmer sent you this email, what she was 17 referring to was developing standards for egg-laying 18 hens?</p> <p>19 MR. MURRAY: Objection; asked and 20 answered.</p> <p>21 THE WITNESS: The retail industry 22 cannot -- is not in a position to develop the 23 standards. The experts are that work in the 24 supplier companies. They have the experts who can 25 develop the guidelines like they did at UEP. So,</p>	<p style="text-align: right;">197</p> <p>1 Q. I understand she's not talking about 2 them. She's talking about species; correct?</p> <p>3 A. She's talking about species, all 4 species.</p> <p>5 Q. Including egg-laying hens; correct?</p> <p>6 MR. MURRAY: Objection. Asked and 7 answered.</p> <p>8 THE WITNESS: I don't have anything else 9 to say about it. I'm just reading it like you are. 10 BY MS. LEVIN:</p> <p>11 Q. Yes. And you received it in 2008; 12 correct, Mr. Pruet?</p> <p>13 A. Correct.</p> <p>14 Q. And did you not understand at the time 15 that you received the second page of Exhibit 31 that 16 when Ms. Marmer wrote, "Kroger has been a leader in 17 pushing the retail industry to develop standards for 18 species," that one of the species she was referring 19 to were egg-laying hens?</p> <p>20 A. All I can say is, we had a 21 representative that was dealing with poultry and 22 eggs on the committee. And that's -- she was 23 responding to the work of that group.</p> <p>24 Q. Right.</p> <p>25 A. Right.</p>

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<p style="text-align: right;">198</p> <p>1 Q. But the committee included an expert on 2 egg-laying hens; correct?</p> <p>3 MR. MURRAY: Objection; mischaracterizes 4 his testimony.</p> <p>5 BY MS. LEVIN:</p> <p>6 Q. Dr. Denton was an expert on egg-laying 7 hens; correct?</p> <p>8 A. And poultry in general.</p> <p>9 Q. And poultry, but also egg-laying hens. 10 And Ms. Marmer was happy to see that Dr. Denton 11 would be meeting with you; correct?</p> <p>12 A. She doesn't say that.</p> <p>13 Q. "I'm glad to see your animal welfare 14 advisers are meeting." Do you see that? The very 15 first sentence of the email.</p> <p>16 A. Yeah, but she doesn't specifically point 17 out Dr. Denton. She just talks about the panel in 18 general.</p> <p>19 Q. Well, but Dr. Denton was on the panel; 20 correct, Mr. Pruet?</p> <p>21 A. Correct.</p> <p>22 Q. So she was happy that there was going to 23 be a meeting that included an expert on animal 24 welfare standards for egg-laying hens; correct?</p> <p>25 MR. MURRAY: Objection to the form of</p>	<p style="text-align: right;">200</p> <p>1 A. She was glad to see the panel --</p> <p>2 Q. Right.</p> <p>3 A. -- meeting.</p> <p>4 Q. In the third paragraph of Ms. Marmer's 5 email, she states, "We want to have a higher 6 standard for our company. We will always be 7 science-based. We want to push the supplier 8 community more than we have in the past." 9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What did you understand Ms. Marmer to 12 mean when she sent you that sentence?</p> <p>13 A. That we want to have science-based 14 standards that meet or exceed the industry 15 requirements.</p> <p>16 Q. Right. So a higher standard than --</p> <p>17 A. Would be exceeding.</p> <p>18 Q. Right. And what did you understand by 19 "We want to push the supplier community more than we 20 have in the past"?</p> <p>21 A. We want them to agree to comply to 22 animal welfare requirements.</p> <p>23 Q. And did you understand the supplier 24 community to include those who supplied shell eggs 25 and egg products to Kroger?</p>
<p style="text-align: right;">199</p> <p>1 the question; mischaracterizes the document and the 2 testimony.</p> <p>3 THE WITNESS: I can't speak to what she 4 meant when she made that statement, what she 5 specifically was thinking or saying or feeling.</p> <p>6 BY MS. LEVIN:</p> <p>7 Q. You were completely baffled when you 8 received this email?</p> <p>9 A. No, I wasn't completely baffled.</p> <p>10 Q. Then what did you understand she was 11 talking about?</p> <p>12 A. That she was talking about the animal 13 welfare panel.</p> <p>14 Q. That included an expert on egg-laying --</p> <p>15 A. Which just happened --</p> <p>16 Q. Which included an expert, Dr. Denton, on 17 animal welfare for egg-laying hens?</p> <p>18 MR. MURRAY: Objection to the form of 19 the question; mischaracterizes the testimony.</p> <p>20 THE WITNESS: I will say Dr. Denton, who 21 happens to be an expert in poultry and eggs, was 22 part of the panel.</p> <p>23 BY MS. LEVIN:</p> <p>24 Q. That she was glad to see was meeting; 25 correct?</p>	<p style="text-align: right;">201</p> <p>1 A. They would have been part of the 2 supplier community.</p> <p>3 Q. So Ms. Marmer, on behalf of Kroger, 4 stated that we, Kroger, want to push -- and in this 5 case, egg suppliers -- more than we have in the 6 past?</p> <p>7 MR. MURRAY: Objection; mischaracterizes 8 the document.</p> <p>9 THE WITNESS: She's talking about all 10 our suppliers in general. She doesn't specifically 11 say "egg suppliers."</p> <p>12 BY MS. LEVIN:</p> <p>13 Q. But one of the groups of suppliers she's 14 referring to are the suppliers of shell eggs and egg 15 products?</p> <p>16 MR. MURRAY: Same objection.</p> <p>17 THE WITNESS: I can only speak to, you 18 know, what she's written here.</p> <p>19 BY MS. LEVIN:</p> <p>20 Q. Right. Which you received. What did 21 you understand when you received it?</p> <p>22 A. That all of our suppliers need to be 23 meeting or exceeding animal welfare guidelines for 24 their individual industries.</p> <p>25 Q. And that included suppliers of shell</p>

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<p style="text-align: right;">202</p> <p>1 eggs and egg products; correct?</p> <p>2 A. They would have been part of this</p> <p>3 evaluation.</p> <p>4 Q. Part of the group that Kroger needs to</p> <p>5 push; correct?</p> <p>6 MR. MURRAY: Objection; form of the</p> <p>7 question.</p> <p>8 THE WITNESS: We want to push the</p> <p>9 supplier community more than we have in the past.</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. And that includes suppliers of shell</p> <p>12 eggs and egg products?</p> <p>13 A. I don't know what she means by "push."</p> <p>14 Q. I'm not asking you what she means by</p> <p>15 "push." We'll, again, allow others to determine</p> <p>16 that since you are so puzzled by it.</p> <p>17 But my question was whether the supplier</p> <p>18 community she's referencing includes suppliers of</p> <p>19 shell eggs and eggs products.</p> <p>20 MR. MURRAY: Objection to the form of</p> <p>21 the question and gratuitous comment.</p> <p>22 BY MS. LEVIN:</p> <p>23 Q. A supplier community that Kroger needs</p> <p>24 to push includes the suppliers of shell eggs and egg</p> <p>25 products; is that right?</p>	<p style="text-align: right;">204</p> <p>1 answered.</p> <p>2 THE WITNESS: They are part of Kroger's</p> <p>3 supply base. So they were included as part of this</p> <p>4 animal welfare panel's evaluation.</p> <p>5 BY MS. LEVIN:</p> <p>6 Q. And they were part of the supplier</p> <p>7 community that Ms. Marmer said Kroger wants to push;</p> <p>8 correct?</p> <p>9 MR. MURRAY: Objection; asked and</p> <p>10 answered.</p> <p>11 MS. LEVIN: You know, if you can find --</p> <p>12 MR. MURRAY: Mischaracterizes the</p> <p>13 document.</p> <p>14 MS. LEVIN: If you can find an answer in</p> <p>15 all of that to that question, God bless you; but I</p> <p>16 surely haven't heard it.</p> <p>17 MR. MURRAY: I've heard it five</p> <p>18 different times. He's told you that's all he can</p> <p>19 interpret it.</p> <p>20 THE WITNESS: That's all I'm going to</p> <p>21 say about it. They are part of our supplier</p> <p>22 community.</p> <p>23 BY MS. LEVIN:</p> <p>24 Q. And they are part of the supplier</p> <p>25 community that Ms. Marmer said Kroger wants to</p>
<p style="text-align: right;">203</p> <p>1 A. They would have been represented by the</p> <p>2 panel.</p> <p>3 Q. And that was part of the supplier</p> <p>4 community that Ms. Marmer said Kroger needs to push?</p> <p>5 A. They are part of Kroger's supplier</p> <p>6 community.</p> <p>7 Q. That Kroger needs to push; correct?</p> <p>8 A. She doesn't specifically say we're</p> <p>9 pushing those specific suppliers. We're pushing --</p> <p>10 we want all our suppliers to achieve the animal</p> <p>11 welfare guidelines appropriate for each of their</p> <p>12 industries.</p> <p>13 Q. But Ms. Marmer says Kroger wants to push</p> <p>14 the supplier community, and included within that</p> <p>15 supplier community are the vendors of shell eggs and</p> <p>16 egg products; correct?</p> <p>17 MR. MURRAY: Objection to the form of</p> <p>18 the question, asked and answered.</p> <p>19 THE WITNESS: I've stated my</p> <p>20 interpretation of Sentence 3.</p> <p>21 BY MS. LEVIN:</p> <p>22 Q. And included within the supplier</p> <p>23 community that Kroger needs to push are the</p> <p>24 suppliers of shell eggs and egg products; correct?</p> <p>25 MR. MURRAY: Objection; asked and</p>	<p style="text-align: right;">205</p> <p>1 push --</p> <p>2 MR. MURRAY: Objection to the form of</p> <p>3 the question. Mischaracterizes the document.</p> <p>4 BY MS. LEVIN:</p> <p>5 Q. -- correct.</p> <p>6 MR. MURRAY: And it -- it's already been</p> <p>7 answered.</p> <p>8 THE WITNESS: I feel like I've answered</p> <p>9 the question.</p> <p>10 BY MS. LEVIN:</p> <p>11 Q. I understand you do. It's a very simple</p> <p>12 yes-or-no question. Yes or no: When Ms. Marmer</p> <p>13 wrote, "We want to push the supplier community," did</p> <p>14 you understand that to include sellers of shell eggs</p> <p>15 and egg products?</p> <p>16 A. All I'm saying is I don't know what</p> <p>17 Ms. Marmer was thinking when she said "push."</p> <p>18 Q. I'm not asking you what she meant by</p> <p>19 "push," Mr. Pruett. My question is really simple.</p> <p>20 My question is, what did she mean by "supplier</p> <p>21 community"? Did it include suppliers of shell eggs</p> <p>22 and egg products?</p> <p>23 A. They would have been part of our</p> <p>24 supplier community.</p> <p>25 Q. That Ms. Marmer was referencing in the</p>

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<p style="text-align: right;">206</p> <p>1 third sentence of Bullet Point 3 of Exhibit 31?</p> <p>2 MR. MURRAY: Objection; mischaracterizes</p> <p>3 the document and it's been asked and answered.</p> <p>4 THE VIDEOGRAPHER: Two minutes,</p> <p>5 Counselor.</p> <p>6 THE WITNESS: I'm telling you how I'm</p> <p>7 interpreting this.</p> <p>8 BY MS. LEVIN:</p> <p>9 Q. I would love to hear: How did you</p> <p>10 interpret "supplier community"? Did you interpret</p> <p>11 that phrase to include the suppliers of shell eggs</p> <p>12 and egg products?</p> <p>13 A. They would be part of our supplier</p> <p>14 community, Kroger's supplier community.</p> <p>15 Q. That Ms. Marmer said Kroger need to</p> <p>16 push?</p> <p>17 MR. MURRAY: Objection.</p> <p>18 THE WITNESS: That's how it reads.</p> <p>19 MS. LEVIN: Since we're near the end of</p> <p>20 the tape, we'll take a break.</p> <p>21 THE VIDEOGRAPHER: We are going off the</p> <p>22 record. This is the end of Disk 3. Time on video</p> <p>23 is 15:30.</p> <p>24 (Recess taken.)</p> <p>25 THE VIDEOGRAPHER: We are going back on</p>	<p style="text-align: right;">208</p> <p>1 why I wrote these notes.</p> <p>2 Q. The first note says, "Pushed retail</p> <p>3 industry to develop standards."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Was that referring to Kroger pushed</p> <p>7 retail industry to develop standards?</p> <p>8 A. It says, "Pushed retail industry to</p> <p>9 develop standards."</p> <p>10 Q. Right. Who pushed retail industry to</p> <p>11 develop standards?</p> <p>12 A. Since it doesn't say "Kroger," I don't</p> <p>13 know if we're talking specifically about Kroger here</p> <p>14 or some other entity.</p> <p>15 Q. Well, the first sentence of Ms. Marmer's</p> <p>16 Point No. 1 is, "Kroger has been a leader in pushing</p> <p>17 the retail industry to develop standards"; correct?</p> <p>18 A. That's what's indicated. That's what's</p> <p>19 said.</p> <p>20 Q. And your first handwritten entry is,</p> <p>21 "Pushed retail to develop standards"; correct?</p> <p>22 A. Correct.</p> <p>23 Q. But you can't tell me whether, like</p> <p>24 Ms. Marmer's email, the handwritten reference is</p> <p>25 also to Kroger pushed retail industry to develop</p>
<p style="text-align: right;">207</p> <p>1 the record. This is the beginning of Disk 4. Time</p> <p>2 on video is 15:39.</p> <p>3 BY MS. LEVIN:</p> <p>4 Q. Mr. Pruet, let's return to Exhibit 31</p> <p>5 for just another minute or two.</p> <p>6 You'll see that there's handwriting by</p> <p>7 you, both on the first page of Exhibit 31, which</p> <p>8 you've told us are your notes from the animal</p> <p>9 welfare panel meeting of December 16, 2008. There</p> <p>10 are also handwritten notes on Page 2 of Exhibit 31,</p> <p>11 which is the email from Ms. Marmer to you.</p> <p>12 A. Yes.</p> <p>13 Q. Do you know whether the notes on the</p> <p>14 email are from the meeting on December 16, 2008, or</p> <p>15 from something else?</p> <p>16 A. I don't know if they were associated</p> <p>17 with the meeting.</p> <p>18 Q. Do you recall calling Ms. Marmer after</p> <p>19 you received the email that is the second page of</p> <p>20 Exhibit 31?</p> <p>21 A. I don't remember calling her.</p> <p>22 Q. So you don't know whether these notes</p> <p>23 are notes from a conversation that you had with</p> <p>24 Ms. Marmer?</p> <p>25 A. No, I can't say that I remember exactly</p>	<p style="text-align: right;">209</p> <p>1 standards?</p> <p>2 A. I simply don't remember.</p> <p>3 Q. The third bullet point in your</p> <p>4 handwriting says, "Want to have higher standard.</p> <p>5 But keep it balanced and science-based."</p> <p>6 Did I read that correctly?</p> <p>7 A. Correct.</p> <p>8 Q. Do you recall what discussions you or</p> <p>9 the panel may have had concerning the needs to keep</p> <p>10 standards science-based?</p> <p>11 A. Well, it goes back to what was indicated</p> <p>12 earlier in the mission statement, which would have</p> <p>13 been covered at that first meeting, Kroger</p> <p>14 Exhibit 29.</p> <p>15 Q. And specifically what part of the</p> <p>16 mission statement?</p> <p>17 A. The first paragraph of the mission</p> <p>18 statement [reading]: To provide expert</p> <p>19 science-based knowledge and guidance to assist the</p> <p>20 nation's largest grocery retailer in developing</p> <p>21 policies, vendor standards, and internal monitoring</p> <p>22 process.</p> <p>23 Q. So Kroger wanted to be sure that</p> <p>24 whatever standards it required its shell egg and egg</p> <p>25 product providers to follow, that they were</p>

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<p style="text-align: right;">210</p> <p>1 science-based standards; correct?</p> <p>2 MR. MURRAY: Object to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: They would have been part</p> <p>5 of this process, since Dr. Denton is part of the</p> <p>6 committee -- or was part of the committee at that</p> <p>7 time.</p> <p>8 BY MS. LEVIN:</p> <p>9 Q. Right. But part of the mission was to</p> <p>10 ensure that whatever guidelines Kroger required its</p> <p>11 shell egg and egg product providers to follow, that</p> <p>12 they were expert science-based standards; correct?</p> <p>13 A. That would be correct, since they were</p> <p>14 part of the panel or Dr. Denton was part of the</p> <p>15 panel.</p> <p>16 Q. Ms. Marmer's email, in Point 6, part of</p> <p>17 Exhibit 31, makes reference to the more extreme</p> <p>18 advocacy groups. And your handwritten notes at the</p> <p>19 bottom make reference to "any reasonable advocacy</p> <p>20 groups?"</p> <p>21 Do you see those two references?</p> <p>22 A. I do.</p> <p>23 Q. Do you know what those two entries were</p> <p>24 referring to?</p> <p>25 A. "Any reasonable advocacy groups? Will</p>	<p style="text-align: right;">212</p> <p>1 more reasonable than PETA or HSUS?</p> <p>2 A. We haven't identified anyone else to</p> <p>3 work with.</p> <p>4 Q. Let's look at Exhibit 32. And the only</p> <p>5 question I have for you is, are these, in fact, the</p> <p>6 official minutes of the "Kroger Panel Animal Welfare</p> <p>7 Meeting" of December 16, 2008?</p> <p>8 A. These would be the minutes.</p> <p>9 Q. Who kept the minutes?</p> <p>10 "Who prepared them?" is really my</p> <p>11 question.</p> <p>12 A. John Kolenski would have prepared the</p> <p>13 minutes.</p> <p>14 Q. And would there be a review at the next</p> <p>15 meeting and an approval of the minutes of the prior</p> <p>16 meeting of the panel -- Kroger Panel animal welfare</p> <p>17 Group?</p> <p>18 A. We would send out the minutes to the</p> <p>19 panel ahead of the next meeting, just to refresh</p> <p>20 their memory on what was covered.</p> <p>21 Q. Right. And there was every effort made</p> <p>22 to make sure that the minutes accurately reflected</p> <p>23 what happened at the meeting?</p> <p>24 A. John would have made every effort to do</p> <p>25 that.</p>
<p style="text-align: right;">211</p> <p>1 research."</p> <p>2 Q. Right. Well, let's start with</p> <p>3 Ms. Marmer's reference to extreme, more extreme</p> <p>4 advocacy groups. Do you know what she was referring</p> <p>5 to?</p> <p>6 A. She would have been referring to PETA</p> <p>7 and HSUS.</p> <p>8 Q. So you're able to interpret that</p> <p>9 particular sentence?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So PETA and HSUS?</p> <p>12 A. Yes.</p> <p>13 Q. And do you recall what you were</p> <p>14 referring to when you said "any reasonable advocacy</p> <p>15 groups?"</p> <p>16 A. I do.</p> <p>17 Q. What was that?</p> <p>18 A. I was trying to figure out if or</p> <p>19 identify any other advocacy groups other than PETA</p> <p>20 and HSUS.</p> <p>21 Q. Because PETA and HSUS were not</p> <p>22 reasonable advocacy groups?</p> <p>23 A. Well, I was hoping to find a consumer</p> <p>24 group or advocacy group that was more reasonable.</p> <p>25 Q. Did you find any advocacy group that was</p>	<p style="text-align: right;">213</p> <p>1 Q. Did you review the minutes to ensure</p> <p>2 that they were accurate?</p> <p>3 A. I can't tell you at that time I did. He</p> <p>4 could have sent them out without my review.</p> <p>5 Q. Well, after you received them, did you</p> <p>6 review them to make sure they were accurate?</p> <p>7 A. Yes. I would have read them for</p> <p>8 accuracy.</p> <p>9 Q. And do you recall there being any</p> <p>10 inaccuracies in Exhibit 32?</p> <p>11 A. I don't remember any.</p> <p>12 Q. Take just a minute to look at some</p> <p>13 documents pertaining to compliance with animal</p> <p>14 welfare guidelines.</p> <p>15 MS. LEVIN: I'm marking as Exhibit 33 a</p> <p>16 document bearing Bates No. MPS-00123670.</p> <p>17 (Kroger Exhibit 33 was marked for</p> <p>18 identification.)</p> <p>19 THE WITNESS: I reviewed Exhibit 33.</p> <p>20 BY MS. LEVIN:</p> <p>21 Q. And what is Exhibit 33?</p> <p>22 A. It is a letter from John Kolenski to Bob</p> <p>23 Krouse at Midwest Poultry.</p> <p>24 Q. And the letter states in the second</p> <p>25 sentence, "As you know, Kroger continues to require</p>

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<p style="text-align: right;">214</p> <p>1 an annual third-party animal welfare audit be 2 conducted at each of your egg-laying facilities that 3 has the potential of shipping shell, liquid or dried 4 eggs to any Kroger retail division or Kroger 5 manufacturing facility." 6 Is that correct? 7 A. Correct. 8 Q. And then it asks Mr. Krouse to provide a 9 complete copy of each of your plant's most recent 10 animal welfare audits; correct? 11 A. Yes. 12 Q. Did you discuss with Mr. Kolenski this 13 particular document or any documents like it? 14 A. I would have discussed the general 15 format of the documents for all of our suppliers 16 with John Kolenski, and he would have put in the 17 appropriate guidelines applicable to that supplier. 18 Q. And did you discuss Defendants' 19 Exhibit 33 in your preparation for your deposition 20 today? 21 A. We did not discuss this particular 22 letter. 23 Q. Do you know whether Kroger sends a 24 letter like Exhibit 33 to all of its suppliers of 25 shell eggs or egg products on an annual basis?</p>	<p style="text-align: right;">216</p> <p>1 BY MS. LEVIN: 2 Q. So you have a system to ensure that 3 Kroger receives from each of its shell egg and egg 4 product suppliers some sort of animal welfare audit; 5 correct? 6 A. Correct. 7 Q. And that's to ensure that the supplier 8 is complying with the UEP animal welfare guidelines? 9 A. Correct. 10 MS. LEVIN: Let's mark as Exhibit 34 a 11 document bearing Bates No. KRGEED -- I don't know 12 how many zeros that is -- 0000082. There may be one 13 more zero in there. 14 (Kroger Exhibit 34 was marked for 15 identification.) 16 THE WITNESS: I've reviewed Exhibit 34. 17 BY MS. LEVIN: 18 Q. What is Exhibit 34? 19 A. It's a letter from John Kolenski to 20 Roger Deffner of National Food Corporation. 21 Q. Dated April 7, 2010; is that correct? 22 A. Correct. 23 Q. And what is the substance of 24 Mr. Kolenski's letter to Mr. Deffner? 25 A. It looks like his facility failed a UEP</p>
<p style="text-align: right;">215</p> <p>1 A. I can only tell you that this letter 2 would go out to a new supplier. I'm not certain if 3 we sent out a reminder letter every year. 4 Q. Well, do you know whether Midwest 5 Poultry was a new supplier as of November 2009? 6 If you'd like to refresh your 7 recollection, you can look back at Exhibit 17. 8 A. I know Midwest Poultry was a supplier. 9 Q. But was it a new supplier in 2009? 10 A. No, it wouldn't have been. 11 Q. So was it Kroger's practice to send a 12 letter like Exhibit 33 to all of its suppliers of 13 shell eggs and eggs products on an annual basis? 14 A. I don't know if this was a -- if this is 15 an annual letter or if it's -- it was a reminder 16 letter. We do have a requirement that we receive 17 third-party audits from each of our suppliers. 18 Q. So if you received the third-party audit 19 just unsolicited from the supplier, you wouldn't 20 need to send out Exhibit 33; correct? 21 MR. MURRAY: Objection -- 22 THE WITNESS: We have a -- 23 MR. MURRAY: -- form of the question. 24 THE WITNESS: We have a system for 25 tracking supplier audits each year.</p>	<p style="text-align: right;">217</p> <p>1 audit on August 20th, 2009; and John is asking for 2 the following information as a follow-up to the 3 audit failure. 4 Q. How would Kroger learn that a facility 5 had failed a UEP audit? 6 A. It would be reported through the 7 database when they submit their audit. That's the 8 only way I know that he would have found out about 9 this. 10 Q. So the supplier is required to submit 11 through some sort of database -- 12 A. Yes; annually. 13 Q. -- an audit letter annually. 14 And that's been true since 2005? 15 A. The audit database was not created until 16 about 2008. 17 Q. Prior to 2008, how did Kroger go about 18 learning whether its egg suppliers were complying 19 with the UEP guidelines? 20 A. It would have been a manual process. 21 They would have mailed in hard copies of their 22 audits. 23 Q. So instead of submitting it 24 electronically, they actually mailed in a physical 25 copy?</p>

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<p style="text-align: right;">218</p> <p>1 A. Yes; for the files.</p> <p>2 Q. And if a supplier failed prior to 2008,</p> <p>3 it would receive a letter similar to Exhibit 34?</p> <p>4 A. They would have received a similar</p> <p>5 communication.</p> <p>6 Q. Let's mark as Exhibit 35 a document</p> <p>7 bearing the Bates No. KRGEED00020416 through '17.</p> <p>8 (Kroger Exhibit 35 was marked for</p> <p>9 identification.)</p> <p>10 THE WITNESS: I've reviewed Exhibit 35.</p> <p>11 BY MS. LEVIN:</p> <p>12 Q. And what is Exhibit 35?</p> <p>13 A. It's an email from Jennifer Siewe to Tom</p> <p>14 Klump, copying Dallas Lindley.</p> <p>15 Q. Who is Ms. Siewe?</p> <p>16 A. She was formerly a procurement</p> <p>17 associate -- I don't know her exact title -- that</p> <p>18 worked in our sourcing department.</p> <p>19 Q. Did she work for Mr. Klump?</p> <p>20 A. I cannot tell you if she directly</p> <p>21 reported to Tom Klump or not.</p> <p>22 Q. But she worked in the same general area</p> <p>23 of procurement?</p> <p>24 A. She worked in procurement.</p> <p>25 Q. Was her responsibilities -- did her</p>	<p style="text-align: right;">220</p> <p>1 the "re" line.</p> <p>2 A. Okay.</p> <p>3 Q. And my question is whether you</p> <p>4 understood Animal Care Certified to be a reference</p> <p>5 to eggs produced in accordance with the UEP animal</p> <p>6 welfare guidelines.</p> <p>7 A. I was not familiar with that</p> <p>8 relationship.</p> <p>9 Q. So you don't know what ACC eggs are?</p> <p>10 A. I can't tell you I do.</p> <p>11 Q. Well, in the top email from Ms. Siewe</p> <p>12 back to Mr. Klump, she says, "John Kolenski's group</p> <p>13 has always advised that all of our suppliers should</p> <p>14 be UEP-approved -- I'm not sure if this differs from</p> <p>15 ACC."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And you're not able to provide any light</p> <p>19 on whether that is the same or different than --</p> <p>20 whether ACC and UEP-approved are the same?</p> <p>21 A. Right. My assumption is it's a</p> <p>22 different requirement, but I'm not familiar with</p> <p>23 ACC.</p> <p>24 Q. But, as we know, you won't assume things</p> <p>25 here today.</p>
<p style="text-align: right;">219</p> <p>1 responsibilities include procurement of shell eggs</p> <p>2 or egg products?</p> <p>3 A. I believe she was involved in that</p> <p>4 supply chain.</p> <p>5 Q. The email from Ms. Siewe to Mr. Klump is</p> <p>6 dated March 10, 2010; correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the "re" line is Animal Care</p> <p>9 Certified industrial eggs.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. What are industrial eggs?</p> <p>13 A. Industrial eggs would be like ingredient</p> <p>14 eggs.</p> <p>15 Q. So those would be eggs that go into</p> <p>16 bakery products or other kinds of products that</p> <p>17 Kroger makes itself?</p> <p>18 A. What we would formulate in our own</p> <p>19 manufacturing plants.</p> <p>20 Q. And do you understand Animal Care</p> <p>21 Certified to be a reference to the UEP animal</p> <p>22 welfare guidelines?</p> <p>23 A. ACC -- what was -- what did ACC stand</p> <p>24 for again?</p> <p>25 Q. Well, it says Animal Care Certified in</p>	<p style="text-align: right;">221</p> <p>1 A. Correct. I'm not familiar with ACC.</p> <p>2 Q. Mr. Kolenski's group, in any event, has</p> <p>3 advised that all of the suppliers need to be</p> <p>4 UEP-approved, even for industrial eggs; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And that's been true since the advent of</p> <p>7 Kroger's adoption of the UEP animal welfare</p> <p>8 guidelines in its contracts?</p> <p>9 A. Yes.</p> <p>10 Q. And it remains true today?</p> <p>11 A. Yes.</p> <p>12 Q. Let's shift gears to a different topic</p> <p>13 for just a minute. Maybe some of these will be</p> <p>14 relatively quick.</p> <p>15 One of the topics that you've been</p> <p>16 designated is Topic 14, which reads: Your contacts</p> <p>17 with the US Department of Justice, Florida Attorney</p> <p>18 General or any other federal or state law</p> <p>19 enforcement official in connection with any</p> <p>20 investigation of possible antitrust violations</p> <p>21 regarding the production or sale of eggs or egg</p> <p>22 products that is related to the subject matter of</p> <p>23 this litigation.</p> <p>24 What did you do to educate yourself on</p> <p>25 that topic?</p>

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<p style="text-align: right;">222</p> <p>1 THE WITNESS: I didn't do anything to</p> <p>2 educate myself in that topic because I haven't been</p> <p>3 in contact with any of those agencies.</p> <p>4 BY MS. LEVIN:</p> <p>5 Q. Well, you haven't been in contact with</p> <p>6 any of the agencies. I understand that.</p> <p>7 Did you determine whether anyone at</p> <p>8 Kroger had been in contact with any of those</p> <p>9 agencies?</p> <p>10 A. The only other person I consulted was</p> <p>11 John Kolenski, and he said he had not.</p> <p>12 Q. So you and Mr. Kolenski were the only</p> <p>13 two people that you identified as having any</p> <p>14 information relevant to Topic 14?</p> <p>15 MR. MURRAY: Objection to the form of</p> <p>16 the question; mischaracterizes his testimony.</p> <p>17 THE WITNESS: We didn't identify</p> <p>18 ourselves -- identify that we were the only two. We</p> <p>19 just acknowledged that neither one of us had been in</p> <p>20 communication with any of those agencies.</p> <p>21 BY MS. LEVIN:</p> <p>22 Q. But did you consider whether there might</p> <p>23 be somebody else within Kroger who had had such</p> <p>24 contacts?</p> <p>25 A. We did not ask anybody else in the</p>	<p style="text-align: right;">224</p> <p>1 A. I don't. John and I, generally</p> <p>2 responsible for those contacts.</p> <p>3 Q. Well, you're generally responsible for</p> <p>4 them, but you don't really know if any others</p> <p>5 occurred; correct?</p> <p>6 MR. MURRAY: Objection to the form of</p> <p>7 the question. It's argumentative.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MS. LEVIN:</p> <p>10 Q. [Reading]: Topic 22: From 1999 to the</p> <p>11 present, Kroger's participation in, membership in or</p> <p>12 awareness of trade groups and trade associations in</p> <p>13 the grocery store industry, including but not</p> <p>14 limited to the Food Marketing Institute.</p> <p>15 What did you do to prepare yourself for</p> <p>16 Topic 22?</p> <p>17 A. Other than our involvement with FMI, I</p> <p>18 didn't evaluate or look into relationships with</p> <p>19 other associations.</p> <p>20 Q. So do you know whether Kroger belongs to</p> <p>21 any other trade groups or trade associations in the</p> <p>22 grocery store industry?</p> <p>23 A. FMI is the only association that is</p> <p>24 retail-oriented that we belong to.</p> <p>25 Q. Are there other such associations?</p>
<p style="text-align: right;">223</p> <p>1 organization.</p> <p>2 Q. So you made no effort to determine</p> <p>3 whether anyone within Kroger, other than you or</p> <p>4 Mr. Kolenski, had had any contacts with the</p> <p>5 Department of Justice, the Florida Attorney General</p> <p>6 or any other federal or state law enforcement</p> <p>7 officials?</p> <p>8 A. I personally did not make the effort.</p> <p>9 Q. Did somebody else make the effort?</p> <p>10 A. Our law department could have.</p> <p>11 Q. But did your law -- your law department</p> <p>12 could have what?</p> <p>13 A. Made an effort to determine if anybody</p> <p>14 else at Kroger had been in communication with those</p> <p>15 agencies.</p> <p>16 Q. Did you ask your law department to make</p> <p>17 that determination?</p> <p>18 A. I did not.</p> <p>19 Q. Did anybody ask your law department to</p> <p>20 do that?</p> <p>21 A. I don't know.</p> <p>22 Q. Is there anybody else that you can think</p> <p>23 of that you could have contacted who could have</p> <p>24 provided you with information with respect to</p> <p>25 Topic 14?</p>	<p style="text-align: right;">225</p> <p>1 A. FMI is the only one that I know that</p> <p>2 represents retailers.</p> <p>3 Q. Did you inquire as to whether there were</p> <p>4 others?</p> <p>5 A. I did not.</p> <p>6 Q. What about Topic 23 [reading]: From</p> <p>7 1999 to the present, reports or discussions at</p> <p>8 shareholder meetings concerning animal welfare</p> <p>9 issues?</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What do you know about that topic?</p> <p>13 A. I know that since I've been with the</p> <p>14 company in 2005, there have been a variety of topics</p> <p>15 involving animal welfare that have come in as</p> <p>16 shareholder proposals.</p> <p>17 Q. And have any of those shareholder</p> <p>18 proposals pertained to egg-laying hens?</p> <p>19 A. What I remember were two or three</p> <p>20 relative to battery cages.</p> <p>21 Q. What's a battery cage?</p> <p>22 A. It's a cage, the caged environment for</p> <p>23 egg layers.</p> <p>24 Q. And did those proposals pertain to cage</p> <p>25 space requirements?</p>

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<p style="text-align: right;">226</p> <p>1 A. A couple of them did mention cage space 2 requirements. 3 Q. Do you know when those proposals were 4 made at shareholder meetings? 5 A. I can't tell you the specific dates. I 6 just know that they have come up in shareholder 7 proposals since I've joined the company. 8 Q. Do you know what the proposals were? 9 A. I told you the extent -- to the extent I 10 remember. 11 Are you talking about all animal welfare 12 or just cage-free? 13 Q. Just the -- anything that pertains to 14 egg-laying hens. 15 A. The only proposals I remember were 16 battery cages. 17 Q. And what was the proposal? 18 A. I can't remember the specific proposal. 19 Q. Can you remember generally what it was 20 about, other than battery cages? 21 A. I can't remember specifics. 22 Q. Did you review any documents to prepare 23 for this -- for Topic 23? 24 A. I reviewed a list of the shareholder 25 proposals relative to animal welfare; and I went --</p>	<p style="text-align: right;">228</p> <p>1 Q. And I'm not interested in the selection 2 of auditors. I'm interested in the shareholder 3 resolution that appears at the bottom of, I guess, 4 the third or fourth page of Exhibit 36. 5 A. Okay. I've reviewed that portion of the 6 document. 7 Q. What is Exhibit 36? 8 A. Well, specifically, on -- it looks like 9 top of Page 46 of the exhibit, from the shareholder 10 proposal, a number for that page. 11 Q. Right. 12 A. It's a shareholder resolution relative 13 to egg-laying hens in cramped, wired battery cages. 14 Q. And what is the gist of the shareholder 15 proposal here? 16 A. It's a push for the vendor community to 17 embrace new best practices in animal welfare, and 18 they're talking specifically about egg-laying hens. 19 Q. Is this one of the shareholder proposals 20 that you were referencing in your earlier testimony? 21 A. Yes. Since it involves battery cages, I 22 would have been referencing this one. 23 Q. And do you recall that there were 24 additional shareholder proposals beyond that 25 represented in Exhibit 36?</p>
<p style="text-align: right;">227</p> <p>1 I scanned -- I scanned the animal welfare issues, 2 which included battery cages. 3 Q. Do you know whether the proposals that 4 were made were, in fact, made by animal welfare 5 groups like PETA? 6 A. Either PETA or HS -- HSUS. 7 Q. Okay. Did the company take those 8 shareholder proposals seriously? 9 MR. MURRAY: Object to the form of the 10 question. 11 THE WITNESS: We consider all 12 shareholder proposals seriously. 13 BY MS. LEVIN: 14 Q. And was a vote taken on the -- whatever 15 the animal welfare proposal was that you are 16 generally recalling? 17 A. There's always a vote taken on 18 shareholder proposals. 19 MS. LEVIN: Let's mark as Exhibit 36 a 20 document titled "Schedule 14A Information, Proxy 21 Statement Pursuant to Section 14(a) of the 22 Securities Exchange Act of 1934." 23 (Kroger Exhibit 36 was marked for 24 identification.) 25 BY MS. LEVIN:</p>	<p style="text-align: right;">229</p> <p>1 A. There were one or two other ones. 2 Q. But you don't recall when they were 3 made? 4 A. No. I can't recall the year that the 5 proposals were submitted. 6 Q. Do you recall whether they were after 7 2008? 8 A. I can't tell you. 9 Q. But the shareholder proposal embodied in 10 Exhibit 36 did not pass, to your knowledge? 11 A. To the best of my knowledge, it did not 12 pass. 13 Q. Let's look at Topic 37, which is 14 basically a series of topics pertaining to Kroger's 15 Complaint. 16 Have you reviewed the Complaint that 17 Kroger filed in this litigation? 18 A. I did. 19 Q. And, specifically, did you review the 20 Second Amended Complaint? 21 A. I need a copy of the Complaint. 22 MS. LEVIN: I have a copy -- I do if 23 that will help him to -- 24 MR. MURRAY: I think it will help. 25 THE WITNESS: It would be helpful for me</p>

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<p style="text-align: right;">230</p> <p>1 to have a copy.</p> <p>2 MS. LEVIN: I'm marking as Exhibit 37 a</p> <p>3 document captioned "Second Amended Complaint and</p> <p>4 Demand for Jury Trial."</p> <p>5 (Kroger Exhibit 37 was marked for</p> <p>6 identification.)</p> <p>7 BY MS. LEVIN:</p> <p>8 Q. Can you just flip through that and make</p> <p>9 sure that doesn't have highlighting on it. It's</p> <p>10 possible -- it would be in the first couple of</p> <p>11 pages.</p> <p>12 A. I don't see any highlighting.</p> <p>13 Q. Okay. Then you don't have my copy.</p> <p>14 A. Could you repeat the question.</p> <p>15 Q. There's not a question. I just asked</p> <p>16 you to take a look at it.</p> <p>17 Is Exhibit 37 the version of the</p> <p>18 Complaint that you have reviewed?</p> <p>19 A. It appears to be the same version.</p> <p>20 Q. Did you review either the Second Amended</p> <p>21 Complaint, the First Amended Complaint or the</p> <p>22 Complaint prior to those documents being filed?</p> <p>23 A. I did not.</p> <p>24 Q. Do you know who did?</p> <p>25 A. I don't know specifically who did.</p>	<p style="text-align: right;">232</p> <p>1 attorney-client privilege.</p> <p>2 You can answer to the extent you know</p> <p>3 independent of what you learned from your lawyers.</p> <p>4 THE WITNESS: Again, what I know is what</p> <p>5 I read in the Complaint.</p> <p>6 BY MS. LEVIN:</p> <p>7 Q. What do you understand is the factual</p> <p>8 basis for that allegation?</p> <p>9 MR. MURRAY: Objection to the extent it</p> <p>10 calls for a legal conclusion or to the extent your</p> <p>11 answer would reveal information you've learned from</p> <p>12 your lawyers.</p> <p>13 THE WITNESS: Could you repeat the</p> <p>14 question.</p> <p>15 (Record read.)</p> <p>16 MR. MURRAY: Same objection and same</p> <p>17 caution about revealing communications with your</p> <p>18 attorneys.</p> <p>19 THE WITNESS: Again, all I know is what</p> <p>20 I've read in the Complaint.</p> <p>21 BY MS. LEVIN:</p> <p>22 Q. What did you do to prepare for this</p> <p>23 particular topic, 37?</p> <p>24 A. 37 in the deposition notice?</p> <p>25 Q. Yes.</p>
<p style="text-align: right;">231</p> <p>1 Someone in the law department.</p> <p>2 Q. What do you understand is the factual</p> <p>3 basis for Kroger's contention that starting in at</p> <p>4 least 2000 and continuing at least through 2008,</p> <p>5 defendants and their co-conspirators conspired to</p> <p>6 and did curtail the production of eggs as well as</p> <p>7 control and reduce the supply of eggs in order to</p> <p>8 artificially increase the price of eggs sold above</p> <p>9 competitive levels?</p> <p>10 MR. MURRAY: Objection; call for a legal</p> <p>11 conclusion.</p> <p>12 You can answer to the extent you have</p> <p>13 knowledge. And in answering the question, I would</p> <p>14 caution you not to reveal any communications you've</p> <p>15 had with counsel, either with Kroger or outside</p> <p>16 counsel.</p> <p>17 THE WITNESS: The extent of my knowledge</p> <p>18 is what I've read in the Complaint.</p> <p>19 BY MS. LEVIN:</p> <p>20 Q. So you know nothing about the</p> <p>21 allegations of the Complaint or the factual support</p> <p>22 for the allegations of the Complaint beyond what is</p> <p>23 in the Complaint?</p> <p>24 MR. MURRAY: Objection to the extent it</p> <p>25 calls for a legal conclusion or invades</p>	<p style="text-align: right;">233</p> <p>1 A. Well, I reviewed the Complaint. I had</p> <p>2 discussions with internal counsel, outside counsel.</p> <p>3 I talked to the individuals who I've indicated I</p> <p>4 interviewed prior to this deposition.</p> <p>5 Q. What did the individuals that you</p> <p>6 interviewed prior to the deposition tell you about</p> <p>7 the factual basis for the allegations of the</p> <p>8 Complaint?</p> <p>9 MR. MURRAY: And included among those</p> <p>10 individuals were attorneys, so do not reveal any of</p> <p>11 the information you learned from the attorneys.</p> <p>12 Only from anybody else at Kroger.</p> <p>13 THE WITNESS: Beyond my attorneys, we</p> <p>14 did not have any discussions. John Kolenski,</p> <p>15 Brendon Cull, Lynn Marmer, Tom Klump -- make sure I</p> <p>16 got these on the list here -- and Carole Guerrette</p> <p>17 regarding what is indicated in Section 37 of the</p> <p>18 deposition notice.</p> <p>19 BY MS. LEVIN:</p> <p>20 Q. You had no discussions with any of that</p> <p>21 list of people about the factual basis for the</p> <p>22 Complaint?</p> <p>23 A. I did not; only with my attorneys.</p> <p>24 Q. What do you understand is the gist of</p> <p>25 the Complaint?</p>

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<p style="text-align: right;">234</p> <p>1 MR. MURRAY: In answering that question, 2 do not reveal any communications you've had with 3 your clients. You can base it on your reading of 4 the Complaint. 5 THE WITNESS: Based on my reading of the 6 Complaint, I understand that a group of plaintiffs, 7 retailers, including the Kroger Co., has issued this 8 Complaint or legal action against a group of egg 9 producers and UEP because of reduced -- reduction of 10 egg supply, and that reduction of egg supply has led 11 to an artificial increase in pricing. 12 BY MS. LEVIN: 13 Q. And what do you understand was the means 14 by which the decrease in egg supply occurred? 15 MR. MURRAY: Same instruction about 16 revealing any information you learned from your 17 lawyers. 18 THE WITNESS: Again, I can only tell you 19 what I've learned from the Complaint. 20 BY MS. LEVIN: 21 Q. So you didn't do anything in response to 22 Paragraph 37, other than talk to your attorneys, 23 which we're being told you can't reveal; is that 24 correct? 25 MR. MURRAY: Objection; that</p>	<p style="text-align: right;">236</p> <p>1 time I made a reference to notes. 2 Q. And these notes have assisted you in 3 your testimony today? 4 A. Yes. 5 MS. LEVIN: Can we mark them as an 6 exhibit? 7 MR. MURRAY: Can we make a copy of them 8 so I can have it before you mark it? 9 MS. LEVIN: We can go off the record, 10 and I can run across the hall. 11 THE VIDEOGRAPHER: We are going off the 12 record. Time on video is 16:24. 13 (Recess taken.) 14 (Kroger Exhibit 38 was marked for 15 identification.) 16 THE VIDEOGRAPHER: We are going back on 17 the record. Time on video is 16:30. 18 MS. LEVIN: Could you show Mr. Pruett 19 the document that has been marked as Exhibit 38. 20 BY MS. LEVIN: 21 Q. What is Exhibit 38? 22 A. It's a list of documents that I reviewed 23 before this deposition. 24 Q. And is this the entirety of the list of 25 documents that you reviewed prior to the deposition?</p>
<p style="text-align: right;">235</p> <p>1 mischaracterizes his testimony. He said he read the 2 Complaint. 3 THE WITNESS: I read the Complaint. 4 BY MS. LEVIN: 5 Q. Well, but you didn't do any independent 6 investigation of the factual allegations of the 7 Complaint? 8 A. I did not do -- 9 MR. MURRAY: Objection; it would -- that 10 whole question would invade the attorney-client 11 privilege. 12 You can answer questions based on what 13 your understanding of the Complaint is. 14 BY MS. LEVIN: 15 Q. Well, you can answer that question yes 16 or no. 17 A. I did not do independent investigation. 18 Q. So the only factual basis you can 19 provide me for the allegations in the Complaint are 20 the Complaint itself? 21 A. Correct. I just read the Complaint. 22 Q. Mr. Pruett, I noticed that during the 23 course of the day, you've been referring to notes to 24 refresh your recollection; is that correct? 25 A. I referred to these notes and one other</p>	<p style="text-align: right;">237</p> <p>1 A. Yes. 2 Q. How did you go about selecting the 3 documents that you were to review prior to the 4 deposition? 5 A. I first went to our law department and 6 asked their advice about -- 7 MR. MURRAY: Don't tell them any advice 8 that was provided. 9 BY MS. LEVIN: 10 Q. You can tell me the subject matter of 11 the request. 12 A. I just wanted their guidance on which 13 documents I should view to get ready for this 14 deposition. 15 Q. And did you add to the list of documents 16 anything of your own? 17 MR. MURRAY: Objection to the form of 18 the question. 19 THE WITNESS: No. These were all 20 documents with legal counsel that I agreed to review 21 in preparation for the deposition. 22 BY MS. LEVIN: 23 Q. And did the law department give you the 24 actual copies of the documents? 25 A. I did not get copies of all these</p>

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<p style="text-align: right;">238</p> <p>1 documents directly from the law department.</p> <p>2 Q. But you got copies of all of these</p> <p>3 documents in some way?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review anything that's not</p> <p>6 listed on Defendants' Exhibit 38?</p> <p>7 A. No. These are all the documents I</p> <p>8 reviewed.</p> <p>9 Q. Did you have any recollection, when you</p> <p>10 say "various FMI documents," what that refers to?</p> <p>11 A. Those would have been some of the</p> <p>12 documents I reviewed in discussion with Lynn Marmer.</p> <p>13 Q. And those were documents created by FMI?</p> <p>14 A. They were either created by FMI or</p> <p>15 communications from Lynn to FMI.</p> <p>16 Q. Did you have any difficulty</p> <p>17 understanding any of the FMI documents that you</p> <p>18 reviewed?</p> <p>19 MR. MURRAY: Object to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: Difficulty</p> <p>22 understanding -- what do you mean?</p> <p>23 BY MS. LEVIN:</p> <p>24 Q. Well, when you read the documents, did</p> <p>25 you find them difficult to understand?</p>	<p style="text-align: right;">240</p> <p>1 Q. Keith Neer. Who is Mr. Neer?</p> <p>2 A. He was my predecessor.</p> <p>3 Q. So he's no longer employed by Kroger?</p> <p>4 A. No.</p> <p>5 Q. Did you make any effort to contact</p> <p>6 Mr. Neer?</p> <p>7 MR. MURRAY: Objection to the question.</p> <p>8 THE WITNESS: I did not.</p> <p>9 BY MR. STPHAO:</p> <p>10 Q. When Mr. Neer left the company, did you</p> <p>11 inherit any files from him?</p> <p>12 A. I did inherit files.</p> <p>13 Q. Do you still have those files?</p> <p>14 A. My office still has the files.</p> <p>15 Q. Did you review any of those documents to</p> <p>16 prepare for your testimony today?</p> <p>17 A. I did not review any documents that are</p> <p>18 specifically in that binder.</p> <p>19 Q. Did you have any discussions with, I</p> <p>20 guess it would be with Mr. Cull about any state</p> <p>21 initiatives pertaining to animal welfare?</p> <p>22 A. I don't remember any conversations in</p> <p>23 preparation for this deposition.</p> <p>24 Q. Are you familiar with any efforts by</p> <p>25 states to regulate the conditions under which</p>
<p style="text-align: right;">239</p> <p>1 MR. MURRAY: Objection to the form of</p> <p>2 the question.</p> <p>3 THE WITNESS: I did not find them</p> <p>4 difficult to understand.</p> <p>5 BY MS. LEVIN:</p> <p>6 Q. You were able to understand what FMI was</p> <p>7 talking about in its documents that you reviewed?</p> <p>8 A. Yes.</p> <p>9 Q. In terms of the individuals that you</p> <p>10 have, you have Kevin N. on the second page of</p> <p>11 Exhibit 38 crossed out.</p> <p>12 Who is Kevin N.?</p> <p>13 A. Kevin Murray.</p> <p>14 MR. MURRAY: I think the confusion stems</p> <p>15 from that it is Kenny Nachwalter. Kevin is similar</p> <p>16 to Kenny and that often happens, I find, when I pass</p> <p>17 out my business card.</p> <p>18 BY MS. LEVIN:</p> <p>19 Q. So there was no Kevin N. that you were</p> <p>20 thinking of interviewing and then decided not to</p> <p>21 interview?</p> <p>22 A. No. It was Kevin Murray.</p> <p>23 Q. Are you familiar with Kevin Neer at</p> <p>24 Kroger?</p> <p>25 A. I'm familiar with Keith.</p>	<p style="text-align: right;">241</p> <p>1 egg-laying hens are raised?</p> <p>2 A. I know that there are proposals, like in</p> <p>3 California.</p> <p>4 Q. What do you know about the California</p> <p>5 proposal?</p> <p>6 A. That there are concerns about egg</p> <p>7 producers or egg layers in that state.</p> <p>8 Q. What are the concerns in California?</p> <p>9 A. If I remember correctly, it's about the</p> <p>10 size of cages.</p> <p>11 Q. Has Kroger taken a position with respect</p> <p>12 to any pending legislation in California or pending,</p> <p>13 valid initiatives pertaining to egg-laying hens?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Would it create problems for Kroger if</p> <p>16 individual states adopted guidelines that varied</p> <p>17 from state to state with respect to egg-laying hens?</p> <p>18 MR. MURRAY: Objection; calls for</p> <p>19 speculation, also calls for a legal conclusion.</p> <p>20 You can answer if you know.</p> <p>21 THE WITNESS: It would cause problems</p> <p>22 because we would not have harmonized standards, from</p> <p>23 an animal welfare standpoint.</p> <p>24 BY MR. STPHAO:</p> <p>25 Q. Right. And from Kroger's perspective,</p>

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<p style="text-align: right;">242</p> <p>1 harmonized standards are important; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Are you familiar with something called</p> <p>4 Kroger's annual sustainability report?</p> <p>5 A. I am.</p> <p>6 MS. LEVIN: And let's mark as Exhibit 39</p> <p>7 a document entitled "Kroger, Doing Our Part, 2009</p> <p>8 Sustainability Report."</p> <p>9 (Kroger Exhibit 39 was marked for</p> <p>10 identification.)</p> <p>11 THE WITNESS: I'm familiar with the</p> <p>12 sustainability report, but I did not review 2008's</p> <p>13 prior to this deposition. I reviewed 2013's.</p> <p>14 MS. LEVIN: Okay. Well, we can mark as</p> <p>15 Exhibit 40 the 2013 sustainability report.</p> <p>16 (Kroger Exhibit 40 was marked for</p> <p>17 identification.)</p> <p>18 BY MS. LEVIN:</p> <p>19 Q. So I have -- take a look at it, and the</p> <p>20 pages I'm particularly interested in in Exhibit 41</p> <p>21 are Pages 30 and 31.</p> <p>22 A. Yes.</p> <p>23 Q. And in Exhibit 40, the page I'm</p> <p>24 particularly interested in is Page 31.</p> <p>25 MS. CRABTREE: Sorry if I missed it. Is</p>	<p style="text-align: right;">244</p> <p>1 A. It's there for the public to be able to</p> <p>2 have access to.</p> <p>3 Q. And to rely upon it; correct?</p> <p>4 A. When you mean "rely upon," what are you</p> <p>5 saying?</p> <p>6 Q. Well, I mean to be able to read it and</p> <p>7 understand that the information contained in it is</p> <p>8 accurate.</p> <p>9 A. Yes.</p> <p>10 Q. So in Exhibit 41, which is the 2014</p> <p>11 sustainability report, on Page 30, it states that</p> <p>12 Kroger's animal welfare panel of experts meet at</p> <p>13 least once annually to review suppliers' compliance</p> <p>14 with the FMI's animal welfare standards and other</p> <p>15 best practices.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And that's the animal welfare panel that</p> <p>19 you organized and that you testified about</p> <p>20 previously?</p> <p>21 A. Yes.</p> <p>22 Q. And the FMI animal welfare standards</p> <p>23 would include the animal welfare guidelines for</p> <p>24 egg-laying hens that we've been discussing today;</p> <p>25 correct?</p>
<p style="text-align: right;">243</p> <p>1 there a Bates label for this?</p> <p>2 MS. LEVIN: No, there's not. These are</p> <p>3 off of the Kroger Web site.</p> <p>4 MS. CRABTREE: Okay. Thanks.</p> <p>5 BY MS. LEVIN:</p> <p>6 Q. Do you have any role in preparing the</p> <p>7 sustainability report for Kroger?</p> <p>8 A. John Kolenski helps with the preparation</p> <p>9 of this report.</p> <p>10 Q. And he's helped with the preparation</p> <p>11 since 2005?</p> <p>12 A. I can't tell you he's helped since 2005.</p> <p>13 I just know he's helped in previous years.</p> <p>14 Q. Would he have helped with the 2009</p> <p>15 sustainability report?</p> <p>16 A. Yes.</p> <p>17 Q. And would he have helped with the 2013</p> <p>18 sustainability report?</p> <p>19 A. If there were any updates required, yes.</p> <p>20 Q. And are you aware that the</p> <p>21 sustainability report is posted on the Kroger</p> <p>22 Web site?</p> <p>23 A. I am.</p> <p>24 Q. So, again, it's posted on the Kroger Web</p> <p>25 site for people to review and rely upon?</p>	<p style="text-align: right;">245</p> <p>1 MR. MURRAY: Object to the form of the</p> <p>2 question.</p> <p>3 THE WITNESS: It would include all</p> <p>4 standards for animal welfare, including egg layers.</p> <p>5 BY MS. LEVIN:</p> <p>6 Q. And as of 2014, the Kroger animal</p> <p>7 welfare panel has not found the UEP animal welfare</p> <p>8 guidelines to be inadequate, has it?</p> <p>9 A. That is correct. We're still using</p> <p>10 those guidelines as our animal welfare standards for</p> <p>11 egg layers.</p> <p>12 Q. Why did you review Exhibit 41 prior to</p> <p>13 your deposition?</p> <p>14 A. Because it was one of the documents that</p> <p>15 that was recommended for review by the law</p> <p>16 department.</p> <p>17 Q. Let's take a look at Exhibit 40. And</p> <p>18 Exhibit 40 is the 2009 sustainability report.</p> <p>19 A. I have this listed as 39.</p> <p>20 Q. Have I got 2009 as 39?</p> <p>21 A. Yes.</p> <p>22 Q. And 2013 as 40?</p> <p>23 A. That's what I have.</p> <p>24 Q. Yeah. I think you're right. I think I</p> <p>25 may have created --</p>

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<p style="text-align: right;">246</p> <p>1 MR. MURRAY: That's the official version 2 marked by the court reporter. 3 MS. LEVIN: -- a little bit of a muddle 4 in my inquiries about what I described as 5 Exhibit 41, which is, in fact, Exhibit 40. But I 6 think that the questions were sufficiently clear. 7 BY MS. LEVIN: 8 Q. Let's look at Exhibit 39, the 2009 9 sustainability report. 10 Do you see the second sentence on 11 Page 31 under "Animal Welfare" where it states, 12 "Kroger has provided retail grocery industry 13 leadership on this topic"? 14 A. Yes, I do. 15 Q. And the topic being referred to is the 16 humane treatment of animals from farm to table? 17 A. Yes. 18 Q. And that includes egg-laying hens? 19 MR. MURRAY: Objection to the form of 20 the question. Misstates the document. 21 THE WITNESS: It includes all animal 22 welfare standards. 23 BY MS. LEVIN: 24 Q. Including those pertaining to egg-laying 25 hens?</p>	<p style="text-align: right;">248</p> <p>1 BY MS. LEVIN: 2 Q. And that's part of what's being 3 referenced here in Exhibit 39; correct? 4 MR. MURRAY: Objection; misstates the 5 document. 6 THE WITNESS: If you want to interpret 7 that, that's one of the animal welfare standards, 8 yes. It would be included in -- in our animal 9 welfare initiative. 10 BY MS. LEVIN: 11 Q. I don't want to interpret anything, 12 Mr. Pruett. I want your understanding of the 13 document that appears on Kroger's Web site. And I 14 want to understand whether the reference to Kroger 15 beginning work with FMI and NCCR to develop an 16 industry-wide program that would introduce 17 science-based guidelines was referring, at least in 18 part, to guidelines pertaining to egg-laying hens. 19 MR. MURRAY: Objection. 20 THE WITNESS: That's not what it says, 21 but it is one of the animal welfare practices that 22 we consider because it's one of the species for 23 industries that we want to have guidelines for. 24 BY MS. LEVIN: 25 Q. It's one of the species that, in 2001,</p>
<p style="text-align: right;">247</p> <p>1 A. That would be part of the standards we 2 are evaluating in our guidelines. 3 Q. And the next sentence states that in 4 2001 Kroger began working with the Food Marketing 5 Institute (FMI) and the National Council of Chain 6 Restaurants (NCCR) to develop an industry-wide 7 program that would introduce science-based 8 guidelines to strengthen animal welfare practices; 9 correct? 10 A. Correct. 11 Q. And, again, what's being included within 12 that sentence would be guidelines pertaining to 13 egg-laying hens; correct? 14 MR. MURRAY: Object to the form of the 15 question; misstates the document. 16 THE WITNESS: They're part of our 17 supplier community. 18 BY MS. LEVIN: 19 Q. And part of the industry-wide program 20 that would introduce science based guidelines or 21 guidelines pertaining to egg-laying hens; correct? 22 MR. MURRAY: Same objection. 23 THE WITNESS: They are -- part of the 24 group of animal welfare standards that we consider 25 when we're talking about animal welfare.</p>	<p style="text-align: right;">249</p> <p>1 Kroger began working with FMI and NCCR to develop 2 guidelines for; correct? 3 A. It was one of the species. 4 Q. Do you know whether there have been any 5 efforts in Ohio to promulgate some sort of different 6 guidelines pertaining to animal welfare? 7 A. The only one that I can recall are 8 gestation crates for hogs. 9 Q. You don't recall any pertaining to 10 egg-laying hens? 11 A. I don't. 12 Q. Are you familiar with an organization 13 called National Egg Regulation Origination or NERO? 14 A. I am not. 15 Q. Do you know what a Stakeholder 16 Engagement Meeting is? 17 A. I'm not familiar with that meeting 18 format. 19 Q. You've never heard of that group? 20 A. No. 21 MS. LEVIN: Let me just take a minute to 22 look through my outline and make sure I've gotten 23 everything. We can go off the record if you want. 24 MR. MURRAY: Sure. 25 MS. LEVIN: It's up to you.</p>

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<p style="text-align: right;">250</p> <p>1 THE VIDEOGRAPHER: We are going off the 2 record. Time on video is 16:51. 3 (Recess taken.) 4 THE VIDEOGRAPHER: We are going back on 5 the record. The time on video is 16:54. 6 MS. LEVIN: I have no further questions 7 at this time. We do reserve the right to recall 8 Mr. Pruett if we determine it's necessary to obtain 9 answers to topics for which it would be my view that 10 he was not adequately prepared. 11 MR. MURRAY: I disagree. I think 12 Mr. Pruett did an extraordinary amount of 13 preparation for this deposition, and we would oppose 14 any such effort. 15 Do the people on the phone have any 16 questions? 17 MR. NOVACK: This is Paul Novak. I do 18 not. 19 MS. MARKOWITZ: Sharon Markowitz. I do 20 not either. 21 MS. CRABTREE: Molly Crabtree. I do 22 not. 23 MR. MURRAY: I just have one very brief 24 area to ask about. 25 - - -</p>	<p style="text-align: right;">252</p> <p>1 designate the entire deposition as highly 2 confidential pursuant to protective order. And do 3 not waive signature. 4 (Videotaped deposition adjourned 5 at 4:56 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">C E R T I F I C A T I O N</p> <p>I hereby certify that I have read the foregoing transcript of my deposition testimony, and that my answers to the questions propounded, with the attached corrections or changes, if any, are true and correct.</p> <p style="text-align: center;">----- PAYTON PRUETT</p>
<p style="text-align: right;">251</p> <p>1 2 EXAMINATION 3 BY MR. MURRAY: 4 Q. In the beginning of the deposition when 5 they were asking you about your background and all, 6 I don't believe you were asked about your 7 educational background. 8 Could you please provide us with the 9 studies you undertook and the degrees you obtained. 10 A. I received a bachelor's of science in 11 microbiology from East Tennessee State University in 12 1986. I received a master's degree in food science 13 and technology in 1990 from Virginia Tech. And from 14 the same university, I received my doctorate in food 15 science and technology. 16 Q. Ph.D. in food science? 17 A. Ph.D. 18 Q. What year was that? 19 A. 1993. 20 MR. MURRAY: I have no further 21 questions. 22 MS. LEVIN: I have no further questions. 23 THE VIDEOGRAPHER: This concludes the 24 videotaped deposition of Payton Pruett on Tuesday, 25 April 8th, 2014. We are off the record at 16:56. MR. MURRAY: And we are going to</p>	<p style="text-align: right;">253</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">C E R T I F I C A T E O F S H O R T H A N D R E P O R T E R</p> <p>I, Gail Inghram Verbano, Registered Diplomate Reporter, Certified Realtime Reporter, Certified Shorthand Reporter (CA) and Notary Public, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.</p> <p style="text-align: center;">----- Gail Inghram Verbano, CSR, RDR, CRR CA-CSR No. 8635</p>

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